UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/1
8 June 1990

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July-3 August 1990

Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

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I. INTRODUCTION

1. In resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. In resolution 1990/62, the Commission on Human Rights requested the Secretary-General to give all necessary assistance to the Working Group in discharging its tasks. In resolution 1989/34, the Sub-Commission had made a similar request.

3. In accordance with these resolutions, appropriate communications requesting information, comments and suggestions were addressed by the Secretary-General to Governments on 2 February 1990.

4. The present document contains replies received up to 23 May 1990 from Governments commenting on the first revised text of the draft universal declaration on indigenous rights, as well as their proposals to be taken into account in a second revised text. Additional replies, if any, will be included in addenda to this document.

II. INFORMATION SUBMITTED BY GOVERNMENTS

A. Argentina

I. PREAMBULAR PART

1. In the first paragraph, we propose the deletion of the word "peoples", not only because its meaning raises problems in international law but because the general drafting of the text makes it superfluous. Consequently, in contrast to what we shall do elsewhere, we do not propose that it should be replaced by other terms such as "populations" or "communities", which add nothing to the paragraphs and, further, might give rise to confusion.

2. The first preambular paragraph should read as follows:

> "Considering the indigenous are born free and equal in dignity and rights in accordance with existing international standards while at the same time recognizing the right of all individuals and groups to be different, to consider themselves different and to be regarded as such".

3. In the third preambular paragraph the words "and legal" should be deleted and the past tense "have traditionally occupied" should be changed to the present "traditionally occupy".

4. The reason for the proposed deletion is that there must be a single legal system for all the inhabitants of a country, otherwise it is admissible to establish a special legal régime for a community.

5. The change of tense in the verb (present instead of past) is absolutely necessary. To link the protection of certain rights with the lands which indigenous persons occupied in a distant past calls into question a situation consolidated centuries ago and would also constitute a source of insoluble conflicts which would surely undermine the effectiveness of the declaration.

6. We therefore propose the following text for the third preambular paragraph:

> "Recognizing the specific need to promote and protect those rights and characteristics which stem from indigenous history, philosophy of life, traditions, culture, social and economic structures, especially as these are tied to the lands which the groups traditionally occupy".

7. The fourth preambular paragraph should be deleted in its entirety. We acknowledge that it is an improvement on the original text proposed in that it excludes revolt against all forms of oppression. Nevertheless, the elliptical language used in the amended text would appear to recognize the legitimacy of recourse to violence.

8. In the ninth preambular paragraph, the use of the term "peoples" may give rise to confusion, as was pointed out earlier. In our opinion, it is better to use more neutral terms such as "populations" or "communities" which in no way lessen the force or attenuate the purposes of the declaration and are more acceptable to many States. It should be borne in mind that the term "peoples" has a very precise meaning in international law; it is one of the constituent

elements of a State and its undeniable link with the principle of self-determination will put many difficulties in the way of its acceptance as qualifying a specific community.

9. We therefore propose the following text for the ninth preambular paragraph:

> "Believing that indigenous populations (or communities) should be free to manage their own affairs to the greatest possible extent, while enjoying equal rights with other citizens in the political, economic and social life of States".

10. The tenth preambular paragraph should be deleted in its entirety. The paragraph lays down a general principle relating to self-determination which is acceptable as such only if it is considered in reference to the concept of "people" unanimously accepted in international law. However, since the text begins by stating that "nothing in this declaration", it has to be interpreted as also applicable to indigenous communities. Since not only Argentina, but many other countries are known to hold the position that the concept of self-determination does not apply to indigenous communities, as they form an integral part of a specific State, the tenth preambular paragraph is unacceptable to our country.

11. Neither do we think it advisable to amend it by reducing it to a statement of general principle, since that would be superfluous.

12. In the eleventh preambular paragraph, the term "peoples" should be replaced by "populations" or "communities", depending on what is thought to be appropriate.

II. PRINCIPLES

13. Part I, comprising articles 1 and 2, does not call for any comment on our part.

14. We consider that in Part II, articles 3, 5 and 9 might be amended in a way that does not affect the overall meaning of the declaration, while helping to obviate misunderstandings.

15. The expression "as distinct peoples" in article 3 should be deleted, since this requirement is not compatible with the standing of indigenous persons as citizens of a single State. Ethnic and cultural particularities, adequately recognized and protected in other articles of the declaration, do not justify their being considered as peoples distinct from the State of which they form part.

16. We propose the following text for article 3:

> "3. The (collective) right to exist and to be protected against genocide, as well as the (individual) rights to life, physical integrity, liberty and security of person".

17. In article 5 the phrase "of imposition of foreign life-styles" should be deleted. In the first place, the vagueness of the expression does not make for a clear understanding of whether the allusion to foreign life-styles is intended to describe the rest of the non-indigenous national community; in this sense no one can be considered a foreigner in his own country. Second, there is a risk that the phrase could be interpreted as offering indigenous persons the possibility of avoiding complying with national law, which they have an obligation to obey like any other citizen.

18. We propose the following text for article 5:

> "5. The individual and collective right to protection against ethnocide. This protection shall include, in particular, prevention of any act which has the aim or effect of depriving them of their ethnic characteristics or cultural identity, of any form of forced assimilation or integration and of any propaganda derogating their dignity and diversity".

19. The words "and to use them for administrative, juridical, cultural and other purposes" should be deleted in article 9.

20. This requirement cannot be satisfied in Argentina. It is more reasonable to include the obligation of the State to provide or make available the services of interpreters in cases when the indigenous person does not know the national language. Moreover, this requirement is included in our criminal procedure legislation in respect of any persons being questioned who do not know the language.

21. In our view, article 9 might be drafted as follows:

> "9. The right to develop and promote their own languages, including an own literary language, and to use them for cultural and other purposes. In legal and administrative proceedings, when the indigenous person does not know the national language, the State shall obligatorily provide and/or make available the services of interpreters".

22. In Part III, article 12, for the reasons given when discussing the third preambular paragraph, the past tense used in "which they have traditionally occupied or used" should be replaced by the present tense "which they traditionally occupy or use".

23. The consent required to take away land establishes a privilege for the indigenous communities not enjoyed by the rest of the national community, which is subject to the possible deprivation of its assets on the ground of public interest, by the procedure known as expropriation.

24. With regard to the reference to treaties, which we shall also take up subsequently, our position is known and it is shared by other States; it is that indigenous communities lack capacity to conclude treaties, an activity which devolves only upon those subjects recognized by international law as having that capacity.

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25. We propose the following text for article 12:

> "12. The right of collective and individual ownership, possession and use of the land or resources which they traditionally occupy or use. The lands may only be taken away from them by means of fair compensation and in the same conditions as apply to all inhabitants of the State, should this situation be prescribed by law".

26. Article 14 should be drafted differently, in order to bring it into line with the internal legislation of nearly all States in the region. The term "control" should be deleted because it is ambiguous and equivocal; it should also be borne in mind that certain kinds of resource, such as subsoil resources, in a very large number of cases, has been established to be the property of the nation and are therefore not liable to any kind of control by individuals. Moreover, under Argentine legislation, which recognizes very ancient precedents such as are applied nowadays in many States, waters suitable for general uses are public assets owned by the nation or by the individual States comprising it. On the question of the use of the tense of the verb relating to occupation or use, we refer to what was said earlier in connection with the third preambular paragraph. We propose the following text for article 14:

> "14. The right to special measures to ensure their ownership of the lands they traditionally occupy or otherwise use and the use of their resources including flora and fauna, as well as the use of waters and ice sea, in complete conformity with the laws of the State and in the same conditions as apply for all citizens".

27. In article 15, the reference to theories related to discovery, terra nullius, wastelands or idle lands should be deleted. We have already drawn attention, in connection with the third preambular paragraph, to the impossibility of linking the protection of certain rights with the lands which indigenous persons occupied long ago, without causing major upheavals in the centuries old land-ownership system prevailing throughout Latin America. Although it is true that in the light of contemporary thinking such theories are untenable, to rectify them with a retroactive effect of centuries, would be equally unrealistic. In order to be consistent with our position on the use of the verbs occupy and use in the present tense, we believe that this article may be drafted envisaging the deprival of lands from the current legal viewpoint on expropriation.

28. We propose the following text for article 15:

> "15. The right to reclaim land and surface resources or, where this is not possible, to seek just compensation for the same when the property has been taken away from them without consent. Compensation, if the parties agree, may take the form of land or resources of quality or legal status equal or equivalent to that of the property previously owned by them".

29. In that article 16 demands the full consent of the indigenous populations affected in respect of any action that might derogate or deteriorate their natural habitat, it seems to establish for them a right of veto, as it were, on administrative decisions or national laws not enjoyed by the rest of the inhabitants of the country.

30. This difficulty could be overcome by drafting article 16 as follows:

> "16. The right to protection of their environment and in particular against any action or course of action which may result in the destruction, deterioration or pollution of their natural habitat, land, air, water, sea ice and wildlife, assuring the full and effective participation of the communities concerned in the decision that affect them. The right to just and fair compensation for any such action or course of conduct".

31. Article 17 should be deleted, and in particular the reference to the "exploitation of mineral and other subsoil resources". It is very important to bear in mind that in almost all the countries of the Latin American region, the subsoil resources are, by law, the property of the respective national States and that no provision is made for any kind of compensation, indemnity or profit-sharing for individuals as a result of their exploitation. Individuals may only claim payment in the event that their lands are expropriated. In this situation, the obligatory consultation referred to in this paragraph would be unacceptable to most of the States in the region.

32. Further, the requirement in respect of large-scale projects generally has a nuance of obligation which would appear to place the State in a situation of dependence, undermining its decision-making power in cases of projects of national importance. More serious still, since the last sentence establishes just and fair compensation whenever these activities give rise to adverse consequences, in this particular case it establishes a principle that disregards the equality of the parties. In effect, after establishing the obligatory nature of consultations, which presupposes that an agreement has been concluded for a specific project, it prescribes obligatory compensation for the consequences of an activity to which consent was freely given.

33. Part IV is generally acceptable, although a number of amendments need to be made as a result of our previous remarks.

34. In article 21, for the reasons stated in connection with the third preambular paragraph, the expression "laws and" should be deleted. The text would read as follows:

> "21. The right to participate on an equal footing with all the other citizens and without adverse discrimination in the political, economic and social life of the State and to have their specific character duly reflected in the political system and in socio-economic institutions, including in particular proper regard to and recognition of indigenous customs".

35. Article 25 is unclear since, as it stands, it may give rise to conflicts with the rest of the community of the State to which they belong and with internal legislation. In all modern States, the determination of the responsibilities of individuals vis-à-vis the other members of the community, whether civil or criminal in nature, is a matter for the judicial authorities. Obviously, there are other kinds of obligations and responsibilities for individuals, especially in the form of statutes relating to the members of associations or communities, the violation of which may entail some kind of social or moral punishment, particularly linked to

membership of the group; however, this is something that is universally accepted and unnecessary in a declaration, unless the intention is to set up a kind of particular or special justice for specific groups, and that is clearly unacceptable.

36. Article 25 might be drafted in the following or similar terms:

> "25. The right to determine the social consequences of the responsibilities of individuals to their own community, consistent with the laws and with universally recognized human rights and fundamental freedoms".

37. Article 26 contains a reference to trade across State boundaries which may give rise to conflict. Let us take examples from the Argentine Constitution. The right to trade is recognized in article 14 of the Constitution for everyone "in accordance with the laws that regulate its exercise". Trade across State boundaries is regulated in provisions of the Constitution relating to customs regulations and they cannot be disregarded. Article 67 (1) states that it is for the Congress "to legislate on customs duty ...". Consequently, as it stands, the article would seem to establish a privilege outside the Constitution for the indigenous communities, and which is not enjoyed by the other inhabitants of the nation.

38. In order for it to be acceptable, article 26 should be drafted as follows:

> "26. The right to maintain and develop traditional contacts and co-operation, including cultural and social exchanges with their own kith and kin. Also the right to trade with them across State boundaries, in the same conditions that apply for all the members of the national community in its entirety and subject to the customs regulations in force for all in the country concerned and the obligation of the State to adopt measures to facilitate such contacts".

39. Article 27 should be deleted. We have already pointed out that indigenous communities do not possess the legal capacity of subjects able to conclude treaties in accordance with international law. The Vienna Convention on the Law of Treaties, the instrument to which reference should be made in order to shed light on any conflict on the issue, states in article 2 that a treaty means an international agreement concluded between States in written form and governed by international law.

40. Moreover, if this article alludes to specific arrangements concluded in the distant past, the legal consequences of accepting that situation would be socially and politically undesirable. Those arrangements addressed situations that ceased to exist centuries ago and they cannot be implemented today. It is legally unacceptable to claim that there are responsibilities on the part of a State that did not exist when those arrangements were concluded, invoking the principal of continuity.

41. In Part V, article 28 requires two corrections. One of them does not call for extensive comment, since it concerns the use of the term "peoples" whose unsuitability has already been sufficiently explained.

42. The other refers to the right to a prompt decision of conflicts or disputes by "mutually acceptable" procedures. In the last resort, the procedures are legal ones; to qualify their acceptance by the term "mutually" may be contrary to the principle that the law is obligatory for all. It is obviously reasonable to have some kind of participation in preparing the relevant projects, but this will be possible only to the extent and in the manner authorized by the law.

43. The reference to international human rights review and complaints mechanisms is unnecessary. The use of these mechanisms is always possible in cases where States are parties to the respective instruments that deal with the issue.

44. In our opinion, article 28 could be drafted as follows:

> "28. The individual and collective right to participate in the elaboration of fair procedures for resolving conflicts or disputes and any infringement, public or private, between States and indigenous peoples, groups or individuals. These procedures shall be applied by national courts without excluding, as appropriate, mediation and arbitration."

B. Finland

1. General observations

1. Previous versions of the draft declaration have twice before been the subject of comment at the Ministry of Justice. Since in these comments a more extensive account of the Finnish position on the rights of indigenous peoples and a consideration of the question in respect of the legal system of the country has been set out, the Ministry refers to the substance of these comments (19.3.1988, 3148/45/87 and 17.2.1989, 235/45/89).

2. The draft declaration has each time become more comprehensive and detailed, its contents becoming to a considerable extent similar to those of ILO Convention No. 169. In previous comments the Ministry of Justice and others have pointed out the importance of the mutual correspondence of these two documents.

3. In some cases the definition of the rights of indigenous peoples given in the draft declaration is, however, more detailed and, to some extent, different from the definition in the ILO Convention. In consequence the States have been charged with more far-reaching obligations in the draft declaration. The objectives to be attained are thus very ambitious, bearing in mind the difficulties that the ratification of the ILO Convention seems to cause many of the States.

2. Review of the draft declaration

4. Most of the articles of the draft declaration are acceptable to the Ministry of Justice and constitute no problem from the point of view of Finnish law. In consequence, in the following, attention will be drawn only to certain points of the draft.

(a) The right of language (article 9)

5. The Ministry of Justice emphasizes the central significance to the indigenous peoples and their members of the language rights registered in article 9 and warmly supports the approval of the article. The contents of the article are acceptable as such.

6. As regards Finland it can be noted that a special law on the right of the indigenous people in Finland, the Sami, to use their own language before authorities is under preparation at the Ministry of Justice in co-operation with the Sami delegation. The proposed bill is intended to be submitted to Parliament before the end of this year.

(b) The right of land and natural resources (Part III)

7. A literal application of article 12 may require a change in the foundations of the Finnish real estate system in the Sami areas in Finland. Moreover, a literal observance might prevent the application of the expropriation procedure in projects where the use of such measures is expressly designed to serve the interests of the local population. For these reasons the text of the article would require an appropriate moderation.

8. The same may be said of article 15, the application of which is particularly difficult in Finland, where the majority population and the indigenous people are linguistically related and intermingled at an early stage. It is probably impossible, too, to decide which Finnish areas have in the past been in the possession of the ancestors of the present-day Sami and how far back in history it would be necessary to go in Finland when applying article 15. The situation seems to be different as regards the indigenous peoples of other countries inasmuch as the majority population only arrived in the land of the indigenous people at the time of colonization or later. On these grounds some of the other articles, too, (e.g. articles 12 and 23) seem questionable in Finnish circumstances.

9. The consultation procedure set out in article 17 should not in itself lead to any insuperable difficulties; however, the related system of compensation would require legislative measures if something other is meant than the normal system applied in the law of property, for instance in connection with expropriations and water construction projects.

(c) Collective right of autonomy (article 23)

10. At least a literal reading of article 23 would seem untenable in Finnish circumstances, since many of the matters referred to therein come within the scope of normal communal autonomy. The most important source of livelihood of the Sami, i.e. reindeer husbandry, is, however, based on a system of autonomy of its own, involving not only Sami. Internal taxation is hardly acceptable in these circumstances without further examination.

11. The Ministry of Social Affairs and Health of Finland states that:

> "The draft declaration concerns the collective and individual rights of indigenous peoples based on general human rights. The theme of the draft declaration is associated with the Indigenous and Tribal Peoples Convention of ILO (No. 169). The rights defined in the draft declaration are, however, more far-reaching than in the said ILO Convention. No definition of indigenous peoples has been given in the declaration or other related material. Considered on the basis of the material provided, the declaration should in Finland be applied chiefly to the Sami people.
>
> "The Ministry of Social Affairs and Health proposes that an extension of the declaration, to apply also to the Romany people, should be considered. The Romany people are an ethnic minority living in various parts of the world, with clear characteristics different from the majority populations, such as history, language, customs and practices, as well as a recognizable identity. Also in Finland the Romany people form a permanent minority with their own language and culture. Implementation of the contents of the declaration would mean a clear strengthening of the minority status of the Finnish Romany people and an improvement in their human rights. What is most important from the viewpoint of the Romany people is an acknowledgement of the existence of their language and culture, e.g. in the field of education, as well as development of their social circumstances so as to make them equal to those of the majority population.

"Apart from the fact that the rights formulated in the Draft as a whole promote the social facilities of indigenous peoples, the declaration includes some rights which clearly concern social security, social welfare and health care services. Such rights relate to special government measures to improve the social and economic circumstances of indigenous peoples, the indigenous peoples' right to participate in deciding on health, housing and other social programmes concerning themselves, the right to self-government, e.g. in regard to issues concerning health, housing and social welfare, as well as the right to use their own language, e.g. in administrative and legal matters.

"In the draft the rights have been formulated as a juridically non-binding declaration and the wording of the draft is relatively general. Therefore it is impossible to estimate unambiguously the effects of observance of the declaration in Finland. On the basis of the declaration it would be possible, for example, to make considerable demands concerning the self-government of the Sami people.

"Within the administrative sector of the Ministry of Social Affairs and Health, one of the first priorities would be to increase the services in the Sami language and the Samis' own opportunities to influence the planning of the services."

C. Papua New Guinea

The Government of Papua New Guinea has no comments except on the following draft articles:

Draft article 1

After the words "rights" and "freedoms", this article should include the words "including the right to self-determination".

Draft article 2

The Government shares the view that this article should be reworded so as to avoid the paternalistic connotation in the qualification of indigenous peoples as being different from others.

Draft article 5

The principle enunciated in this article is acceptable. However, in view of the current formulation, there is a need for a precise definition of "ethnocide" or, alternatively, the listing of acts enumerating the concept. The list should be exhaustive.

Draft article 10

The Government shares the views expressed in paragraph 73 of the report of the Working Group concerning this draft article. We believe greater precision is required, bearing in mind the points raised in paragraph 73.

Draft article 17

A clause should be included in this article requiring Governments and transnational corporations to obtain the views and consents of indigenous peoples before carrying out any project which might have adverse consequences for the indigenous peoples.

D. Venezuela

1. The Constitution of Venezuela specifies that all the inhabitants of the country are protected and their rights guaranteed by even-handed legal provisions that take as their starting point the assumption that one of the fundamental duties of the State is to maintain social and legal equality without discrimination based, inter alia, on race, as the preamble to that instrument states. Article 61 of the Constitution guarantees for all inhabitants of the country the enjoyment of equal treatment in all spheres of social relations as well as the enjoyment of equal opportunities.

2. Having regard to the special situation of the indigenous populations, whose progressive incorporation into national life is going ahead gradually, article 77 of the Constitution establishes the possibility that the law may establish the special régime required for the protection of the indigenous communities and their full incorporation into the social, economic and political life of the State.

3. Venezuela has always adopted clear-cut positions on behalf of the indigenous populations and will continue to do so. However, its position on the preservation of the institution of the State of law, its functional character and the equality before the law of all inhabitants of the Republic is also clear.

Consequently, Venezuela supports all the efforts being made at the international level to secure recognition for indigenous communities of the essential and basic rights of the human person, regard being had to their special characteristics and lifestyles and the efforts to ensure that States agree that there should be special protection for them.

5. Studying the draft universal declaration on rights of indigenous peoples, Venezuela notes that it seeks to go beyond the protection of indigenous persons and the efforts to prevent discrimination against them by creating a special situation for them which would place them in a favoured position vis-à-vis the rest of the community in the country in which they live.

6. Rather than prevent discrimination, the draft declaration tends to increase it by promoting the formation within States of watertight compartments or independent communities which, from the constitutional viewpoint Venezuela has no legal capacity to accept, to guarantee and to protect.

7. As far as the draft declaration per se is concerned, in the first preambular paragraph, the phrase relating to recognition of the right of all individuals and groups to be different and to be regarded as such is inappropriate; it is not clear how a State could set up distinct régimes, different for each person or group when what is needed, in the communities grouped into States, is that everyone should be on an equal footing before the law.

8. Also, in the ninth preambular paragraph, the phrase stating that indigenous peoples should be free to manage their own affairs is thought to be very general and a potential source of conflict which the State should avoid. It is the State's responsibility to strive to ensure that everyone is governed and protected by legal standards applicable to all without exception.

9. Paragraph 9 in Part II of the draft declaration, which proclaims the right to preserve and use their own languages, even for administrative, juridical and other relevant purposes is not acceptable to Venezuela, in view of the fact that article 6 of the Constitution specifies that the official language in Venezuela is Spanish and no other language may be used for official purposes, even that of a very large indigenous ethnic group or one that has been in use for a very long period. There is nothing to prevent indigenous communities or groups in Venezuela from speaking their own languages or dialects or from using their particular forms of expression in the context of their individual personal or social relationships but the latter cannot be used in administrative or juridical matters or in any other official dealings with the State.

10. Similarly, paragraph 10 in Part II raises the right of children to have access to education in their own languages and the right to establish, structure, conduct and control their own educational systems and institutions. This provision is also unacceptable, primarily, because of the explanation given above in respect of languages and secondly because, without prejudice to any special protection in the educational system for indigenous communities or groups, Venezuela has a general education policy which must be complied with by all its inhabitants and whose basic and fundamental principles are those established in the Constitution. According to article 78 of the Constitution, in Venezuela, everyone has the right to an education and the State has an obligation to create and maintain schools, institutions and services sufficiently endowed to ensure access to education and to culture, with no other limitations than those stemming from vocation and from aptitude. In its turn, article 79 provides that every natural or juridical person may freely devote himself to the arts or sciences and, after demonstrating his capacity, establish professorships and educational establishments that shall be subject to the inspection and supervision of the State. Article 80 states that education in Venezuela has as its aim the full development of the personality, the training of citizens fitted for life and for the exercise of democracy, the promotion of culture and the development of a spirit of human solidarity. Article 5 of the Educational Organization Act states that anyone may establish professorships and educational establishments, provided he does so in accordance with the provisions of that law or special laws and subject to the inspection and supervision of the State. Similarly, any educational structure or system which is to be introduced into the country must comply with the aforementioned standards and principles.

11. Paragraphs 12, 13, 14, 15, 16 and 17 in Part III of the draft declaration seek to establish a special régime for the right of ownership and possession for the indigenous communities, which Venezuela cannot support because it differs substantially from the system for the protection of property established in the Venezuelan legal order and more particularly in the Constitution. Venezuela guarantees the right of ownership; it has a social function that is subject to the contributions, restrictions and obligations established by law for purposes of public utility or of general interest. The State is responsible for the defence and conservation of the natural resources on Venezuelan territory and the exploitation of those resources must be conducted primarily for the benefit of the community. The declaration is at odds with Venezuelan legislation which has a special régime of protection of the property of indigenous communities and a general waters and soils régime for the enjoyment and common use of biological resources by everyone in the country.

12. Paragraphs 23 and 24 in Part V of the draft declaration seek recognition of the right to autonomy for indigenous communities; the Venezuelan State cannot accept, recognize or protect such a right. Under its Constitution, the municipalities are the primary and independent political unit in the organization of the nation and this independence is regulated and restricted. The States which make up the Republic are independent and equal as political entities. Any other independent organizations have no status within the political and social organization of Venezuela. There is no place in the legal framework of Venezuela for the right to autonomy proclaimed in paragraphs 23 and 24 of the draft declaration, which seek to hand over to the indigenous communities land and resources administration and environmental activities as well as the introduction of internal taxation for financing those autonomous functions. In Venezuela, the only bodies that can introduce and collect taxes are the nation, the states and the municipalities, provided there is an appropriate legal basis.

13. Paragraph 27 seeks to establish an obligation for States to honour treaties and agreements concluded with indigenous people. In that regard, there is no objection to retaining the paragraph which would apply to those States in which these events had occurred.

14. Paragraph 28, in Part VI, establishes the individual and collective right to procedures for resolving conflicts or disputes that are incompatible with the Venezuelan judicial system. Further, Venezuela could not accept this paragraph which would oblige the State to devise a procedure for resolving conflicts or disputes with the indigenous communities and groups that deviates from the judicial system applicable to all inhabitants of the country. Article 68 of the Constitution establishes the right of everyone to utilize the agencies of the administration of justice in order to protect his rights and interests, in accordance with the terms and conditions established by law. Moreover, article 204 of the Constitution states that the Judicial Power in Venezuela is exercised by the Supreme Court of Justice and by other courts prescribed by organic law.

15. Venezuela will support any initiative directed towards the recognition and protection of the rights of indigenous communities or groups provided it does not infringe the unity of the State and its institutions and does not undermine the judicial and social equality which everyone in Venezuela should enjoy. Although it could agree with the spirit underlying the draft declaration, the declaration itself contains unacceptable elements such as those that have been pointed out and to which the Venezuelan State cannot subscribe.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/1/Corr.1
24 July 1990

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
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CORRIGENDUM

The present document contains a corrigendum to the document submitted by the Government of Argentina.

1. Paragraph 23 should read as follows:

23. ... which is subject to the possible deprivation of its immovable assets on the ground of public interest, by the procedure known as expropriation.

GE.90-12491/7049A

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Addendum

The present document contains information submitted by the Governments of Australia and China.

(d) The question of the right to cultural identity should take into account the conceptualization contained in article 5 of the Declaration on Race and Racial Prejudice, especially as regards the necessity to avoid that the notion of identity goes against the dynamism ("adaptation and enrichment of values", according to the Declaration) inherent to culture in general, as well as the right of every individual to "participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits" (Universal Declaration of Human Rights, art. 27).

3. In addition, the Brazilian Government has reservations on the following provisions of the text of the Draft Declaration on Rights of Indigenous Peoples contained in document E/CN.4/Sub.2/1989/33:

(a) The use of the term "peoples" (preamble and operative para. 3) is a deviation in the predominant practice of the United Nations and may give origin to improper interpretations, notably as regards the question of self-determination.

(b) Operative paragraph 5, specially as regards the question of the protection against propaganda derogating the dignity and diversity of the indigenous groups, needs a more precise elaboration. The notion of such a protection against certain kinds of propaganda must be accompanied by a provision pointing out that the action of Governments in this field is necessarily limited by their duty to respect the liberty of expression and the right of everyone to have access to information.

(c) Operative paragraph 9, which deals with the right of the indigenous groups to employ their own language for administrative and juridical ends, would be incompatible with the Brazilian Constitution, in which Portuguese is adopted as the sole official language in our country.

(d) Operative paragraph 12, specifically as regards the right of the indigenous groups of ownership of the lands which they have traditionally occupied, should take into account the equally legitimate system, foreseen in the Brazilian legislation, whereby the indigenous groups have not the ownership but the permanent possession of the lands in question. According to this system, the lands which the indigenous groups traditionally occupy are inalienable and the rights over them are imprescriptible. Furthermore, the formulation for operative paragraph 12 should refer to the lands which the indigenous groups traditionally occupy, rather than to "lands which they have traditionally occupied", as employed in the text of the Draft Declaration.

(e) The formulation of operative paragraph 15, which refers to the right of the indigenous groups to reclaim land and surface resources, is improper and involves extremely controversial aspects, which must be avoided in a declaration aiming at consensus support. Any provision in this sense should limit itself to ensure the indigenous groups the right, within the limits imposed by the national legislations, to recover judicially (and not merely to reclaim) the lands which they traditionally occupy and which have been illegally invaded.

(f) In operative paragraph 19, the idea that the indigenous groups should have the right to deny consent to State measures for the improvement of their conditions must be avoided, for it could imply the existence of a veto power on the part of the indigenous groups as regards State policies.

AUSTRALIA

Draft article 1

Draft article 1 confirms rights which are enshrined in existing international instruments.

(a) It is consistent with Australian Government policy that the Aboriginal and Torres Strait Islander people should have the same rights and obligations and enjoy the same standards of living as the wider Australian community;

(b) Australia supported similar language in articles 3 and 35 of ILO Convention No. 107.

Draft article 2

Draft article 2 is also modelled on the language of major standard-setting instruments which Australia has endorsed.

(a) the phrase "discrimination of any kind" is unclear:

(i) It is presumably aimed at discrimination of any kind on the ground of indigenous status and is not intended to exclude programmes of positive discrimination for the advancement of indigenous populations;

(ii) Line 2 could be clarified, accordingly, to read "adverse discrimination of any kind on the ground of indigenous status".

(b) Draft article 2 is consistent with the thrust of articles 3, 4, 21, 24 and 31 of ILO Convention No. 107.

Draft article 3

The reference to the "right to exist" has been clarified in the latest draft by adding the words "as distinct peoples".

(a) The use of the phrase "physical integrity" is unclear:

(i) It could conceivably cover all the rights listed subsequently but it presumably refers in the present context to freedom from torture and other physical ill-treatment.

(b) Draft article 3 reflects in more general terms the language contained in article 4 (1) of ILO 107.

Draft article 4

Draft article 4 has been modified by adding the word "distinct" before "identity" in line 4.

(a) There might be value in qualifying the right to preserve one's ethnic identity so as not to appear as sanctioning the creation of ethnic enclaves within a society;

(b) Although the collective nature of this right has now been put in square brackets, it remains our view that the right to maintain and develop ethnic characteristics does not fall within the category of rights which are accepted as applying collectively under international law;

(c) It would also be useful to have clarification of what is meant by the term "ethnic characteristics":

(i) Our understanding is that the term would be intended to cover the same social, cultural, religious and spiritual characteristics addressed in articles 2 (2) (b) and 5 (a) of ILO 107.

Draft article 5

Draft article 5 has been amended by specifying its applicability as an "individual" as well as a "collective" right and referring expressly to prevention of acts depriving indigenous peoples of their "cultural" identity. It also envisages protection of those peoples from propaganda denying "their dignity and diversity".

(a) Although there is no equivalent provision in human rights instruments to protect against forced assimilation or integration, this was a major objective of the revision of ILO Convention 107;

(b) The language requiring protection from "propaganda" causes some difficulties:

(i) Australia has taken the position before the Committee on the Elimination of Racial Discrimination that in deciding whether to take measures prohibiting racist propaganda due account must be taken of fundamental rights of freedom of expression and opinion.

Draft article 6

Draft article 6 extends what is usually seen as a right to participate in cultural activities or enjoy one's cultural identity and traditions.

(a) In common with other draft articles we would interpret such a right as being without prejudice to the rights and freedoms of others;

(b) Draft article 6 is so closely linked to the object and purpose of draft article 4 that there could be scope for their amalgamation into a single article:

(i) As in the case of draft article 6 its language is reflected in articles 2 (2) (b) and 5 (a) of ILO 107.

Draft article 7

Draft article 7 has been amended by substituting the words "right to require" for "duty of States" to grant the necessary assistance.

(a) Australia has supported amendments contained in articles 2-6 of ILO 107 recommending that Governments take action to promote indigenous social, economic and cultural rights;

(b) The meaning and scope of the terms "identity" and "development" as used in this draft article should be clarified:

(i) If the term "identity" is restricted to the ethnic identity referred to in draft articles 4-6, then draft article 7 would be addressing narrower issues than those identified in ILO 107.

Draft article 8

Draft article 8 follows closely the language of existing international instruments although it contains an additional right to "maintain, protect and have access to sacred sites and burial grounds".

(a) ILO 107 addressed rights in relation to religion and custom in articles 2 and 5.

Draft article 9

Although this draft article has been recast in the latest redraft, it still goes beyond article 27 of the International Covenant on Civil and Political Rights.

(a) Australia supports the right to use indigenous languages for judicial purposes on the understanding that it be confined to those members of the peoples who have difficulty using the language of the Court:

(i) The draft should be modified to this end drawing on the language (proposed by Australia) contained in article 12 of ILO 107.

Draft article 10

Australia can support draft article 10 provided it includes the qualifications specified in articles 13 (1) and 13 (4) of the International Covenant on Economic, Social and Cultural Rights.

(a) Article 13 (1) states that education "shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms";

(b) Article 13 (4) states that the liberty of individuals and bodies to establish and direct educational institutions is subject always "to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State":

(i) This could be achieved by adding the language proposed by Australia in article 27 (3) of ILO 107.

(c) The draft article reflects in more general terms the provisions of articles 26-29 of ILO 107.

Draft article 11

Draft article 11 remains intact and is supported as drafted.

(a) It draws closely on article 31 of ILO 107.

Draft article 12

Draft article 12 has been modified to include references to "individual" as well as collective ownership, "use" as well as possession and occupation, and "resources" as well as lands.

(a) The draft article goes beyond article 13 of the ILO Convention 107 since it refers to the indigenous possession of lands in the past tense:

(i) ILO 107 refers to "lands which they traditionally occupy" whereas draft article 12 refers to "lands which they have traditionally occupied";

(ii) In the case of Australia, it could appear that the draft article is referring to the whole continent and that "treaty" is used in the sense of a transfer of property.

(b) There is also some difficulty with the reference to "treaties" since the term in international law means agreements concluded between States and governed by international law:

(i) This would exclude agreements concluded with indigenous peoples which form part of a nation.

(c) The new element of "individual" ownership of traditional land or resources goes beyond the provisions of article 14 of ILO 107 (and Australian Government policy);

(d) The new element of "use" of land (and resources) should more logically be followed up under draft article 13 which deals with "use, enjoyment and occupancy";

(e) The new element of "resources" is more logically addressed in draft article 14.

Draft article 13

Although draft article 13 has not been amended it is not clear in what sense "recognition" (of a land tenure system) is being used.

(a) If it means legal recognition there could be problems in applying the draft article domestically since the relationship traditional Aboriginal people have with the land is quite different from legal systems of land tenure and ownership in Australia:

(i) There would be fundamental difficulties in attempting to transfer Aboriginal land systems, including concepts of ownership, custodianship and inheritance, into a legally enforceable system of rights and obligations.

Draft article 14

The scope of draft article 14 has been expanded to enshrine rights to special measures to ensure "ownership" of resources, not only in territories traditionally occupied but also territories "otherwise used" by indigenous peoples.

(a) It is unlikely that Governments would surrender rights to control aspects of land use where possible changes may impact on others;

(b) The word "territories" appears for the first time in the text and requires clarification, perhaps along the lines of article 13 (2) of ILO 107;

(c) A clarification of the additional phrase "and substance of" (resources) would also be helpful.

Draft article 15

As currently drafted, draft article 15 creates a number of difficulties.

(a) There is no nationwide provision in Australia for the reclaiming of lands by Aboriginals:

(i) The return of land to Aboriginal people is pursued on a state by state basis;

(ii) Only in New South Wales and the Northern Territory is there a claims system which provides for the return of Aboriginal ownership of land over which traditional ties can be established.

(b) Compensation remains an ill-defined concept:

(i) It is unlikely that any Australian Government will accede to compensation for land resources which have been removed from possession:

a. although the development of economic and social support programmes and enhanced self-determination and self-management may be an acceptable alternative to achieve the same objective.

(c) The reference to the concept of terra nullius is inappropriate and misleading from Australia's point of view:

(i) Terra nullius is a concept of public international law; it would be inappropriate to use it in the context of domestic land claims.

(d) The words "in particular" place more importance on the right to reclaim land when it has been taken on the basis of discovery, terra nullius, etc:

(i) It is for consideration why some methods of deprivation without consent should give rise to a better right of compensation than others.

Draft article 16

The question of the environmental impact of actions or courses of conduct on land was also taken up in article 7 (3) and (4) of ILO 107, although with the less rigorous condition of "consultation" rather than "consent".

(a) The right of indigenous people to withhold consent to resources development is not available under Federal or state environmental law nor is there an automatic right to compensation:

(i) There is a right, common to all landholders, to claim compensation through the legal processes.

Draft article 17

Draft article 17 has been redrafted to remove any implication that indigenous peoples have a veto power over exploration and exploitation of resources or that there is a limitation on the power of the State in respect of such activities.

(a) The new draft broadens the requirement to consult to "any large-scale activity", removes the reference to a "mechanism" for consultation, and expresses the requirement for compensation in mandatory terms;

(b) A preferable formula would be the language used in article 15 (2) of ILO 107 on the same subject.

Draft article 18

The redraft substitutes "lands or territories" for "settlement" and thereby injects into draft article 18 the same sorts of difficulties adverted to in Part III (draft arts. 12-17 above).

(a) The basis for the draft article can be found in the international human rights covenants which provide that in no case may a people be deprived of its means of subsistence; a similar provision is reflected in articles 2 and 23 of ILO 107;

(b) Draft article 18 enshrines an additional right to engage freely in traditional and other economic activities and an entitlement to compensation if indigenous peoples are deprived of their means of subsistence;

(c) The phrase "and other economic activities" is very broad and adds an unknown and extra dimension to the objective of this draft article:

(i) Unless this ambiguity is removed, we would have difficulty endorsing the draft article as currently worded.

(d) Compensation for past deprivation is unlikely to be acceptable to most Governments nor does it find foundation in existing international instruments.

Draft article 19

Draft article 19 creates no difficulties.

(a) Australia supported the inclusion of amendments to articles 2, 6 and 27 in ILO 107 recommending that Governments take systematic action to promote the full realization of the social, economic and cultural rights of indigenous populations as well as to raise their standard of living:

(i) The language of the draft fully reflects the policy and practice of the Australian Government in the provision of special services to Aboriginal Australians.

Draft article 20

Draft article 20 has been modified to clarify (albeit at the cost of repetition) that programmes should be developed, planned and implemented through indigenous institutions.

(a) Australia is sympathetic to the need for planning and implementation of health, housing and social services designed to meet the special needs of indigenous people:

(i) The right to adequate health and housing is expressed in similar terms in the International Covenant on Economic, Social and Cultural Rights (art. 12) and the Convention on the Elimination of All Forms of Racial Discrimination (art. 5), as well as in articles 24-25 of ILO 107.

(b) The present text gives rise to some ambiguity however:

(i) Given its widest interpretation, it may imply that any service, albeit one provided to all citizens by a Government, should be determined, planned and implemented by indigenous organizations;

(ii) The word "determine" also needs some clarification given the reality that Governments will inevitably reserve their right to make ultimate decisions in relation to public expenditure.

Draft article 21

The redraft expresses the right of peoples to participate in political, economic and social life "on an equal footing with all other citizens".

(a) There is no difficulty in recognizing this right as modified:

(i) Australia supported articles 8-12 of ILO 107 which recommended that Governments promote the full realization of the social, economic and cultural rights of indigenous populations as well as their participation in political and administrative institutions:

a. In supporting these articles, however, we made it clear that nothing in the revised Convention should imply a collective right to self-determination as enshrined in the Charter of the United Nations and the international human rights covenants.

(b) It needs to be clarified that in "giving proper regard and recognition to indigenous laws and customs" members of the indigenous peoples will not be prevented from exercising rights granted to all citizens, and associated duties:

(i) Nor would we wish to see the draft article interpreted as requiring that national political institutions and legal systems be redesigned to reflect the character of indigenous populations;

(ii) The language of article 8 of ILO 107 is preferable in this context.

Draft article 22

The draft article is supported on the understanding that Aboriginal people have equal rights with all other Australians to participate fully at the state level and to elect their parliamentary representatives.

(a) Under the Australian Constitution there is no special provision for political representation of Aboriginal people:

(i) It is highly unlikely that a referendum to allow for such provisions would be successful.

Draft article 23

While the Australian Government is supportive of the collective right to autonomy the implication of segregation in draft article 23 could not be supported.

(a) It goes well beyond the provisions of articles 24-26 of ILO 107:

(i) As currently formulated the provisions would potentially conflict with article 1 (4) and article 3 of the Convention on the Elimination of All Forms of Racial Discrimination;

(ii) To avoid this conflict the draft article could be qualified by reference to the special needs of indigenous people, for example, by inserting "where indigenous peoples require protection" at the beginning of draft article 23.

(b) It would also be preferable that the collective right "only be exercisable with the full consent of the indigenous peoples and so as not to establish a system of racial segregation".

Draft article 24

This draft article draws closely on article 6 (1) (c) of ILO 107 which provides that Governments should "establish means for the full development of these peoples' own institutions and initiatives".

(a) On the basis that the "structures" referred to in the first line are already autonomous, it would seem logical that indigenous peoples should select their own membership;

(b) the word "institutions" requires further clarification:

(i) If "institutions" means indigenous community organizations it could be supported, as the Australian Government provides assistance to many community organizations;

(ii) If "institutions" means a separate political institution then draft article 24 could not be supported.

Draft article 25

The use of the phrase "determine the responsibilities of individuals" causes some concern.

(a) While the purpose of the draft article would appear to be recognition of the obligation a member has to his or her community and would be generally unobjectionable, occasions may arise where the community imposes obligations upon a member which would potentially be inconsistent with civil liberties:

(i) The difficulties would be potentially acute where a person had no choice in regard to the membership of the community;

(ii) Australia does not interpret draft article 25 as justifying the imposition of responsibilities which are inconsistent with freedoms an individual enjoys as a citizen of Australia.

Draft article 26

Draft article 26 has been strengthened to include the right to "maintain and develop" traditional contacts across State boundaries. A complementary "obligation" has been imposed on States "to adopt measures to facilitate such contacts".

(a) In practical terms the draft article does not raise difficulties in the Australian context:

(i) The Torres Strait Treaty recognizes the right of Torres Strait Islanders to free movement and the performance of traditional activities (such as fishing) in areas which transcend State boundaries.

(b) The second amendment goes beyond the more moderate language of article 32 of ILO 107 which requires that Governments take "appropriate measures" to that end.

Draft article 27

Draft article 27 has been modified by replacing the "duty of States" to honour treaties with indigenous populations with the "right (of those peoples) to claim" that States do so.

(a) Subject to the comments made in relation to the status of treaties in draft article 12, this draft article is acceptable:

(i) It merely restates a general principle that agreements are made to be kept.

Draft article 28

The wording of this draft article is too obscure to be acceptable in its present form. If the purpose of the draft article is to provide mechanisms for the settlement of disputes over the draft articles then it should be redrafted in clearer form to reflect this. As a general principle Australia recognizes the need for international and domestic procedures to settle disputes in a way consistent with human rights standards.

(a) While it would be acceptable for draft article 28 to make provision for the international settlement of disputes, experience in relation to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination has shown that in most countries allegations of human rights violations are dealt with by the national courts:

(i) Under the Australian Racial Discrimination Act (1975), for instance, special provision is made for the institution of civil proceedings in national courts by persons aggrieved under the Act;

(ii) Moreover, the availability of a right to recourse by individuals or groups to international mechanisms will depend on whether or not a State is party to the relevant international instruments.

a. The First Optional Protocol of the International Covenant on Civil and Political Rights and declarations under article 14 of the Convention on the Elimination of All Forms of Racial Discrimination are cases in point.

Draft article 29

Draft article 29, which provides that the rights contained in the Declaration constitute "minimum standards" is a new addition.

(a) It follows provisions in other conventions that the rights reflected therein are without prejudice to the more comprehensive provisions contained in other instruments, national or international:

(i) The same objective is addressed in article 35 of ILO 107.

Draft article 30

Draft article 30 is also an addition to the earlier draft.

(a) Provided it is understood to be without prejudice to the rights and freedoms of others in the community it could be accepted.

CHINA

1. The Chinese Government appreciates the efforts of the Working Group on Indigenous Populations in drafting the Universal Declaration on Indigenous Rights, and congratulates the Working Group on its achievements. The Chinese Government believes that although the draft declaration is not perfect, it could serve as a basis for future discussion.

2. In the view of the Chinese Government, the definition of indigenous people constitutes an indispensable part of the declaration, and the fair implementation of the declaration very much depends on the correctness of this definition. Therefore, the definition of indigenous people and the scope of application of the declaration should be clearly provided for in the declaration.

3. In the Declaration on the Right to Development adopted by the United Nations General Assembly, it is clearly stated that the right to development is an inalienable human right. The Chinese Government proposes that "the indigenous people's right to development shall be fully protected and respected" be included in the declaration.

4. The Chinese Government believes that, as with the promotion and protection of other legitimate rights, the primary responsibility for the promotion and protection of indigenous rights lies with the State authorities concerned. All States concerned should take necessary legislative, juridical and administrative measures to promote the economic, social and cultural development of the indigenous communities and to ameliorate the indigenous people's working, living, medical, sanitary, educational and social welfare conditions. In formulating relevant policies and measures, all Governments should fully respect and protect the cultural traditions, social customs and life-style of the indigenous people.

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UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/1/Add.2
23 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July - 3 August 1990

Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from Governments

Addendum

The present document contains information submitted by the Government of Brazil.

GE.90-12467/7015A

COMMENTS OF THE BRAZILIAN GOVERNMENT REGARDING THE TEXT OF THE DRAFT UNIVERSAL DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES CONTAINED IN DOCUMENT E/CN.4/Sub.2/1989/33

1. The Brazilian Government agrees, in principle, with the initiative of drafting a Universal Declaration on Rights of Indigenous Populations. The Brazilian Constitution, adopted on 5 October 1988, includes a whole chapter - Chapter VIII - dedicated to the protection of indigenous rights in our country. However, it is the understanding of the Brazilian Government that the preliminary text of the Draft Universal Declaration on Rights of Indigenous Peoples contained in document E/CN.4/Sub.2/1989/33 needs to be improved and refined in order to be totally compatible with the relevant international instruments in the field of human rights.

2. In this connection, it is the view of the Brazilian Government that the text of the Draft Universal Declaration on Rights of Indigenous Peoples (document E/CN.4/Sub.2/1989/33) should be revised so as to incorporate the following concepts:

(a) The use of the expressions "right to be different" (preamble, para. 1) and "right to exist as distinct peoples" (operative para. 3) should be accompanied by a provision stating that these rights will not serve as a pretext for racial prejudice and that they may not justify any discriminatory practice whatsoever, nor provide a ground for a policy of apartheid. This concern was taken into consideration in the UNESCO Declaration on Race and Racial Prejudice (art. I, para. 2) and applies also to the expressions "ethnic characteristics" and "ethnocide" (operative paras. 4 and 5, respectively), which must not allow interpretations based upon the unacceptable and discriminatory concept of a so-called collective right to racial identity nor result in limitations to the liberty of the individuals.

(b) The text of the Draft Declaration on Rights of Indigenous Peoples should refer to the obligation of States "to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division" (International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, para. 1 (e)).

(c) Operative paragraph 19 should be reinforced in order that the text of the Draft Declaration on Rights of Indigenous Peoples includes an unequivocal affirmation of the right of indigenous groups, without discrimination of any nature, "to enjoy the fruits of social progress and to contribute to it" (Declaration on Social Progress and Development, art. 1). In this context, the text of the Draft Declaration on Rights of Indigenous Peoples should incorporate such provisions as: the inadmissibility of any restriction to the "self-fulfilment" of human beings based upon ethnic or racial considerations (Declaration on Race and Racial Prejudice, art. 4, para. 1); the duty of States "to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population" (Declaration on the Right to Development, art. 2, para. 3); and, particularly, the obligation of States to adopt "special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms" (International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, para. 2).

(g) In operative paragraph 21, the formulation regarding the right of the indigenous groups to have their specific character duly reflected in the legal system and socio-economic institutions is not clear and must be improved taking as parameter article 21 of the Universal Declaration of Human Rights.

(h) In operative paragraph 26, the concept that States are obliged to adopt measures to facilitate contacts between indigenous groups across State boundaries is doubtful. The question of the development and improvement of contacts between indigenous groups across State boundaries should be approached in the light of article 13 of the Universal Declaration of Human Rights, which refers to the freedom of movement and to the right that everyone has to leave any country, including his own, and to return to his country.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/1/Add.3
23 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July - 3 August 1990

Item 4 of the provisional agenda

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Information received from Governments

Addendum

The present document contains information submitted by the government of Canada

GE.90-12479

July 19, 1990

Canada wishes to thank the members of the Working Group on Indigenous Populations (WGIP) for their work on developing the first revised text of a draft "Universal Declaration on the Rights of Indigenous Peoples", as set out in Annex II of the report of the Working Group's seventh session prepared by Ms. Erica-Irene Daes, Chairperson/Rapporteur of the Working Group (U.N. Document No. E/CN.4/Sub.2/1989/36). Canada has already provided general comments on the development of international standards regarding indigenous populations in previous submissions to the Working Group. Canada has also commented on most of the draft principles developed by the Working Group in previous sessions. Canada's previous comments remain applicable.

Canada again welcomes the opportunity to contribute to the deliberations of the Working Group.

General

Canada supports the Working Group's mandate to give special attention to the development of international standards to ensure that indigenous populations of all countries enjoy, on an equal basis with other national citizens, all of the fundamental rights and freedoms afforded by domestic as well as international law. It is recognized that special international attention may sometimes be required in order to achieve a truly equal enjoyment of these rights. However, certain of the principles proposed in the draft declaration appear to go beyond this objective and attempt to provide indigenous populations with greater rights and freedoms than those enjoyed by other national citizens.

In this regard, Canada is of the view that nothing in the draft declaration should preclude states from providing indigenous persons with rights or benefits beyond those available generally to their national citizens. In fact, Canada's indigenous people have all the rights and privileges enjoyed by other citizens. Additionally, the existing aboriginal and treaty rights of its aboriginal citizens are given special constitutional recognition and protection.

Nevertheless, it must be recognized that the situations of indigenous populations vary significantly. In some instances, states are neither prepared to recognize the existence of indigenous populations nor accord them the rights of other citizens, let alone recognize unique, additional rights. Accordingly, Canada would again suggest

that the Working Group consider whether the standards embodied in the draft declaration might more effectively improve the situation of indigenous populations if they were framed as objectives to be realized rather than as rights and/or entitlements.

The Committee might also consider whether the draft declaration should refer to "minimum standards", whether in the preamble or in Article 29. Again, because of the diverse circumstances of indigenous populations, these "minimum standards" may not be achievable or realistic in some states, if formulated as rights, but may be accepted as objectives. It would also be unfortunate if some states were to interpret "minimum standards" as some form of maximum limit on opportunities for indigenous populations

Canada appreciates that many of the principles proposed by the Working Group in previous sessions, and incorporated in this draft declaration, have been amended in light of suggestions put forward by aboriginal people's representatives, states and other interested parties. Canada's views are intended to assist the Working Group in fulfilling its mandate and in that regard we believe that the intent, scope and language of the draft text remain to be clarified in significant instances. As well, a number of articles appear to conflict with Canada's domestic laws and are likely to be incompatible with the legal regimes of other states. In particular, the provisions on land rights are broadly worded and could suggest that occasional use of land or resources gives today's indigenous people rights of ownership and control over vast land areas.

Canada's previous comments remain on the record and there is no need to reiterate them here. However, certain points might again be noted. For example, revisions to earlier draft principles do not consistently clarify the distinction between individual and collective rights of indigenous populations. Similarly, the use of the term "indigenous peoples" in lieu of "indigenous populations", may have implications regarding rights to self-determination in international law that would be unacceptable to many states if it meant that their indigenous populations were to have rights of self-determination similar to those of sovereign nation-states. Clarification of these terms need not, of course, preclude indigenous populations' rights or aspirations to greater autonomy or self-government, in line with current and potential domestic legal provisions.

Another significant feature that underlies many elements of the draft declaration that have been commented upon previously, and requires further clarification, is the nature of states' obligations arising from the draft instrument and the standards it might establish. These obligations, in some instances, are either unclear or may

impose administrative and financial obligations on states that cannot reasonably be achieved. For instance, Canada encourages and financially supports its aboriginal citizens in maintaining, using and promoting their own languages and cultures in their own communities, in educating their children, in legal proceedings, etc. However, Canada and other states would expect that any international declaration on the rights of indigenous populations would recognize that national laws must take into account certain limitations, justifiable in particular circumstances, on indigenous rights, provided that the basic content of those rights is not compromised. Specifically, with regard to Canada's aboriginal peoples, it would be administratively and financially difficult, if not impossible, to provide for the use of over 50 aboriginal languages for administrative or other official purposes.

Similarly, there should be a distinction made between state and private acts, with the protection of the draft principles being confined to those acts that are within the reach of government. It would be difficult, for instance, for states to protect indigenous citizens from every instance of negative propaganda emanating from a private person, that might be seen as "derogating their dignity and diversity" (see Article 5 of the draft declaration).

In a similar vein, certain states' obligations suggested in articles of the draft declaration would be difficult to fulfill since they appear to depend upon states' interfering with the actions of other national citizens, which may be impossible within certain legal regimes. In the case of environmental protection, for example (Article 16), governments are often limited to the imposition of sanctions after the environmental damage has occurred. Of course, indigenous people should be entitled to the same legal redress for environmental damage as non-indigenous people.

This concludes Canada's comments on the first revised text of this draft declaration. Canada may provide additional comments at the upcoming and future sessions of the WGIP.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/2
8 June 1990

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July-3 August 1990

Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from United Nations organs, specialized agencies and intergovernmental organizations

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GE.90-12258/2069B

I. INTRODUCTION

1. In resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. In resolution 1990/62, the Commission on Human Rights requested the Secretary-General to give all necessary assistance to the Working Group in discharging its tasks. In resolution 1989/34, the Sub-Commission had made a similar request.

3. In accordance with these resolutions, appropriate communications requesting information, comments and suggestions were addressed by the Secretary-General to specialized agencies and regional intergovernmental organizations on 2 February 1990.

4. The present document contains replies received up to 23 May 1990 from United Nations organs, specialized agencies and intergovernmental organizations commenting on the first revised text of the draft universal declaration on indigenous rights, as well as their proposals to be taken into account in a second revised text. Additional replies, if any, will be included in addenda to this document.

5. The following United Nations organs, specialized agencies and intergovernmental organizations indicated that they had no comment to make on the text: United Nations organs: The Office of the Commissioner for Namibia; The Office of Legal Affairs; United Nations Environment Programme; United Nations Development Programme; United Nations University; specialized agencies: Food and Agriculture Organization; International Fund for Agricultural Development; intergovernmental organization: Council of Europe.

II. INFORMATION SUBMITTED BY UNITED NATIONS ORGANS

A. Centre on Transnational Corporations

The Centre on Transnational Corporations has noted the inclusion of the Centre's suggestions regarding the paragraph relating to transnational corporations, Part III, paragraph 17. It suggests a reformulation of the last sentence since a "consequence", "happens" or "occurs" and is not "undertaken" as is currently stated.

B. United Nations Population Fund

In view of the urgent need to promote and protect the human rights and fundamental freedoms of indigenous peoples in all parts of the world, UNPF is very pleased with the progress made on the issue, particularly the preparation of the draft declaration, which should serve as a useful means for pursuing this goal. It has no other observations on the draft declaration.

III. UNITED NATIONS SPECIALIZED AGENCIES

A. International Labour Office

Terminology and definition

The International Labour Office has already drawn the attention of the Working Group to the differences in terminology used in the United Nations and in the ILO in this regard. The ILO uses the phrase "indigenous and tribal", while the United Nations uses the word "indigenous" alone. This issue was discussed on several occasions during the process leading to the adoption of Convention No. 169, and it was decided at each stage to maintain the "and tribal" language in order to ensure that the Convention covered all groups similarly situated. As stated in Report VI (1): Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), on page 32: "attempts to analyse the historical precedence of different parts of the national populations would detract from the need to protect vulnerable groups which in all other respects share many common characteristics, wherever they are found". (See also paras. 33 to 35 and 89 of the Report of the Meeting of Experts of 1986, reproduced at pp. 100 to 118 of Report VI (1)). Thus, the draft universal declaration as now drafted has a significantly narrower coverage than ILO Conventions Nos. 107 and 169.

Preamble

The Working Group may wish to include in the draft universal declaration:

(a) References to specific international human rights instruments as they apply to these peoples (see fourth preambular paragraph of Convention No. 169); and

(b) References to consultations held with, and the need for co-operation with, other international organizations (see ninth preambular paragraph of Convention No. 169).

Attention should also be paid to the need for consistency between standards adopted by different organizations to deal with same subjects, in accordance with General Assembly resolution No. 41/120 of 4 December 1986 on setting international standards in the field of human rights. There seem to be no other direct conflicts between the two texts, though there are a number of questions covered in Convention No. 169 but not in the draft universal declaration.

Operative paragraphs

Paragraph 6. It would seem appropriate to characterize "archaelogical sites" as manifestations of the cultures of these peoples, though the other elements of this paragraph do fit this description. A more appropriate placement, or a separate phrase, would be better.

Paragraph 7. The phrase "right to require that States grant ... assistance" might be reconsidered (see also paras. 17, 19 and 27). This kind of phrasing might better be turned to stating that States have obligations,

thus placing the burden on States to provide certain facilities or rights, rather than leaving the burden of claiming such rights on the shoulders of indigenous and tribal peoples.

Paragraph 10. There is no explicit provision for ensuring the access of members of these peoples to the general education systems of the countries in which they live. Reference is made to articles 26 to 31 of Convention No. 169, in particular to articles 26, 28 (1) and 29.

Part III. This subject of land rights is particularly complex. The Working Group is referred to articles 13 to 19 of Convention No. 169, and to the discussions leading to their adoption. It might be desirable to link the basic provision conferring rights to lands (para. 12) more closely to that embodying the right to land claims (para. 15) - see article 14 of Convention No. 169.

There is no provision - at least no explicit provision - in the draft universal declaration for the following concepts covered in Part II of Convention No. 169:

(a) The importance of lands for the cultural and spiritual values of these peoples (art. 13 (1));

(b) A definition or explanation of the concept of "territories" (art. 13 (2));

(c) An obligation on Governments to take steps to identify the lands traditionally used (art. 14 (2));

(d) The establishment of procedures to resolve land claims (as opposed to the right of these peoples to reclaim lands without any corresponding obligation on the State) (art. 14 (3));

(e) The establishment of procedures to deal with cases in which these peoples do not consent to removal from their lands, but States decide to proceed all the same (art. 16 (2));

(f) The imposition of penalties for unauthorized intrusion upon, or use of, the lands of these peoples (art. 18);

(g) The provision of more lands, and of the means to develop the lands they already possess (art. 19).

Paragraph 20. The right to "determine, plan and implement" various programmes, whether or not through their own institutions, may be valueless without a corresponding duty on the State to assist these peoples in acquiring the capability - in both training and financial resources - to assume the burdens involved. The references in paragraph 23 to the right to internal taxation might be used to justify an imposition of such responsibilities on these peoples without the resources necessary to carry them out. See, in this connection, article 27 (3) of Convention No. 169.

Other questions

There appear not to be explicit provisions in the draft universal declaration covering the following questions, covered in Convention No. 169, or the provisions there appear to be somewhat summary:

(a) Procedure to resolve conflicts between the national legal system and the customary laws of these peoples (art. 8 (2));

(b) Measures to permit members of these peoples to understand and be understood in legal proceedings (art. 12);

(c) Measures in regard to recruitment and conditions of employment (art. 20);

(d) Access to vocational training (arts. 21 and 22);

(e) The right to receive adequate health care (art. 25);

(f) Government measures to make known to these peoples their rights and duties (art. 30);

(g) Responsibility on Governments to provide properly-funded government services to administer their obligations (art. 33 (1)).

B. United Nations Educational, Scientific and Cultural Organization

Preamble

First paragraph. The words "indigenous peoples born free and equal" proclaim equality only among indigenous peoples, not among all peoples; in addition, the verb "to be born" is not very appropriate when speaking of peoples. It would be more logical to borrow the expression used in the first preambular paragraph of the International Covenants on Human Rights: "All members of the human family", or the one used in the fourth preambular paragraph of the Declaration on Race and Racial Prejudice (UNESCO, 1978): "All human beings and all peoples". The verb "to be born" should be replaced by the verb "to be".

With regard to the second part of this paragraph, which is evidently derived from article 1, paragràph 2, of the Declaration on Race and Racial Prejudice, the text would be clearer if the language of that Declaration were used as it stood.

The paragraph would then read as follows:

> "Considering that, in accordance with existing international standards, all members of the human family [or 'all human beings and all peoples'] are free and equal in dignity and rights and have the right to be different, to consider themselves different and to be regarded as such."

Second paragraph. This paragraph could be replaced by the fifth preambular paragraph of the UNESCO Declaration referred to above:

> "Convinced that all peoples and all human groups, whatever their composition or ethnic origin, contribute according to their own genius to the progress of the civilizations and cultures which, in their plurality and as a result of their interpenetration constitute the common heritage of mankind."

Fourth paragraph. The last part of this paragraph is ambiguous; the fact that victims of oppression may organize themselves in order to bring it to an end is extremely positive. The intended meaning seems to be quite different. This part of the paragraph might therefore be reworded along the lines of article 2, paragraph 2 (in fine), of the Declaration on Race and Racial Prejudice cited above. The following passage could thus be inserted after the word "deprivation":

> "... which may divide nations internally, give rise to political tensions between peoples and seriously disturb international peace and security".

Fifth paragraph. In the light of the sixth preambular paragraph of the International Convention on the Elimination of All Forms of Racial Discrimination, it seems desirable to insert the words "scientifically and" after the word "are" and before the words "legally wrong":

> "... are scientifically and legally wrong ... ".

Sixth paragraph. This paragraph could be revised so as to use the expressions adopted in other international instruments (for example: art. 2 of the Universal Declaration of Human Rights; third preambular paragraph and art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights):

> "Reaffirming that indigenous peoples are entitled to enjoy their rights (or to exercise their rights) without adverse distinction or discrimination of any kind".

Eighth paragraph. It would be desirable to delete the term "skills" and replace it by "specific needs":

> "Emphasizing the need for special attention to the rights of indigenous women and children and to their specific needs."

Ninth paragraph. Insert the words "and cultural" after the word "social".

Tenth paragraph. It is suggested that the words "otherwise", "generally" and "human rights instruments and" should be deleted. The Covenants do not lay down any criteria and, in any case, what counts is the rules of international law. This part of the paragraph could therefore read as follows:

> "... any people which satisfies the criteria established by international law".

Eleventh paragraph. On the pattern of article 2, paragraph 1, of the International Covenant on Civil and Political Rights, this paragraph could be reworded as follows:

> "Calling on States to respect and to ensure to indigenous peoples within their territory and subject to their jurisdictionon all the rights recognized in the international instruments on human rights."

Twelfth paragraph. In order to preclude the introduction of segregationist policies, it would be as well to draw upon the language of article 1, paragraph 2 (in fine), of the Declaration on Race and Racial Prejudice and insert at the end of this paragraph the following phrase:

> "While taking care not to justify either in law or in fact any discriminatory or segregationist practice whatsoever".

Operative paragraph

With a view to associating intergovernmental and non-governmental organizations with the implementation of the principles proclaimed in the draft declaration, this paragraph could be reworded as follows:

> "Solemnly proclaims this declaration on rights of indigenous peoples, calls upon all States to take prompt and effective measures to implement it in conjunction with the indigenous peoples and invites international governmental and non-governmental organizations to co-operate within the limits of their respective competence in the full and complete realization of the principles it sets forth."

Draft declaration

Article 1. This article could be revised on the basis of articles 19, 20 and 21 of the African Charter on Human and Peoples' Rights and the twelfth preambular paragraph (in fine) of the Declaration on Race and Racial Prejudice, in the following manner:

> "All peoples are equal; they shall enjoy the same respect and shall have the same rights. Nothing can justify the domination, oppression, exploitation, segregation or forced assimilation of a people by another."

Article 2. This article could be revised on the basis of article 4, paragraph 1, of the Declaration on Race and Racial Prejudice:

> "Any restriction on the complete self-fulfilment of individuals and peoples or on free communication between them which is based on racial or ethnic considerations is contrary to the principles embodied in the Charter of the United Nations and the international instruments on human rights."

Article 3. This article should be revised in the light of the African Charter on Human and Peoples' Rights (art. 20, para. 1, art. 22, para. 1, and art. 23) in the following manner:

"All peoples have the right to existence in peace and security and to their economic, social and cultural development with due regard to their freedom and identity."

Article 4. The Declaration on Race and Racial Prejudice (art. 1, para. 2, and art. 3, para. 1) could serve as a model for proclaiming the right to be different while condemning segregationist practices and apartheid. This article could accordingly be drafted as follows:

"All individuals and all human groups have the right to be different and to develop their own cultural life within the national and international context, it being understood that it rests with each group to decide in complete freedom on the maintenance, adaptation or enrichment of the values which it regards as essential to its identity."

Article 5. On the basis of the work of the three UNESCO meetings on ethnocide, the first part of this article could be revised to read as follows:

"Ethnocide or cultural genocide, in the same way as genocide itself, deserves to be condemned by the international community as a crime against humanity. All individuals and all peoples are entitled to effective protection against any act which has the aim or effect of depriving them of their ethnic characteristics or cultural identity, and in particular of the fundamental right to use, preserve, develop and transmit their language, traditions and culture."

Article 6. The question of cultural identity has already been mentioned in other articles. This article should be devoted to cultural development and the protection of the cultural heritage. Recommendation No. 27 of the World Conference on Cultural Policies (Mexico, 1982) relating to the World Decade for Cultural Development and the Convention for the Protection of the World Cultural and Natural Heritage (UNESCO, 1972) could be helpful in the revision of this article. It could be formulated as follows:

"Since culture is a fundamental element in the life of all individuals and all communities, it is essential to take into account the human and cultural dimension of development. All efforts in this field should respond to the aspirations of peoples to freedom, well-being and peace and be aimed at the assertion and enrichment of their cultural identities, the broadening of their participation in cultural life, the protection, conservation and enhancement of their cultural and natural heritage and the promotion of cultural co-operation at the national and international levels."

Article 7. This article should mention, on the one hand, technical assistance and, on the other, co-operation by intergovernmental and non-governmental organizations. The text could be reworded as follows:

"Economic, social and cultural development calls for technical and financial assistance on the part of States and international governmental and non-governmental organizations, together with appropriate measures adopted in consultation with the populations concerned in order to ensure that all individuals and all human groups, in full equality and without any discrimination, can achieve complete self-fulfilment under conditions of respect for and maintenance of their cultural identity."

Articles 9 and 10. These articles should be revised in the light of the comments by observers appearing in paragraphs 72 and 73 of the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1989/36), of the principles proclaimed in ILO Convention No. 169 and in the Convention against Discrimination in Education (UNESCO, 1960) and of the conclusions and recommendations of the UNESCO meetings on ethnocide (December 1981, February and June 1983). These articles could thus be reworded as follows:

"All individuals and all peoples have the right to learn, teach, use, develop and promote their own language, including their own literary language, and to keep the ethnic names of communities, persons and places.

"States shall take effective measures to guarantee ethnic groups the right to education and access to the various forms and degrees of instruction, in particular the right to engage in educational activities, including running schools and using or teaching their own language, provided however:

(i) that this right shall not be exercised in such a manner as to prevent the members of minorities from understanding the culture and language of the community as a whole and from taking part in its activities or to jeopardize national sovereignty;

(ii) that the level of teaching in such schools shall not be lower than the general level prescribed or approved by the competent authorities;

(iii) that attendance at such schools shall be optional."

Article 11. This article could be expanded on the basis of article 13, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and article 5, paragraphs 2 and 3, of the Declaration on Race and Racial Prejudice. The text could read as follows:

"Education shall aim at the full development of the human personality, respect for human rights and understanding among nations, communities and individuals. The competent authorities shall ensure that teaching methods, curricula and materials encourage the elimination of prejudice and all forms of discrimination, promote an intercultural education which recognizes the dignity and diversity of all cultures and are free from stereotyped, partial or derogatory representations of any people."

Additional article. It would perhaps be useful to add an article at the end of part II of this draft declaration, basing it on article 5, paragraph 3, of the Declaration on Race and Racial Prejudice and on suggestions made by the experts at a UNESCO meeting held at Karasjok (Norway) from 29 May to 2 June 1983. The text could read as follows:

"Communication between different groups should be a reciprocal process, enabling them to express themselves and to be fully heard without let or hindrance: appropriate measures should therefore be taken at the national and international levels to enable indigenous peoples to publish and distribute newspapers, magazines and books written in their own language, to establish their own radio and television networks and have access to the mass media."

Articles 12 to 17. On the basis of the principles proclaimed in ILO Convention No. 169 and of the suggestions made by observers (E/CN.4/Sub.2/1989/36, pp. 22-24) and by experts (UNESCO meetings on ethnocide already mentioned), these articles could be amended as follows:

12. "The rights of ownership, possession, use, passage and access of the peoples concerned with regard to the lands which they have traditionally occupied or used shall be recognized, and they may not be deprived of those rights otherwise than with their free and informed consent as witnessed by a treaty or agreement."

14. "The right to special measures to ensure their ownership and control over the resources of the soil, subsoil and submerged lands in the territories they have traditionally occupied, including the flora and fauna, the geothermal and other mineral resources, reef resources and the resources of the ocean crusts."

15. "It would be advisable to insert, as proposed by an indigenous observer, the words 'occupation, cession, abandonment' after the words 'to discovery' and before the words 'terra nullius'."

16. "Right to protection against any activity which may result in the destruction, deterioration or pollution of their environment. Right to just and fair compensation for any damage of this kind caused on their territory by the act or omission of States, enterprises or individuals."

17. "The right to require that no exploitation or exploration project be undertaken in their territory without prior consultation to examine the economic, social and cultural and environmental impact and the possible long-term consequences of the project for the populations concerned."

Article 21. It would perhaps be desirable to replace the word "adverse" by "unfavourable" and to insert the words "and cultural" after "social", the words "and laws and customs" after "specific character" and the words "and cultural" after "socio-economic" and to delete the words "including in particular proper regard to and recognition of indigenous laws and customs".

Articles 22 and 23. These two articles could be merged into one by adding the words "including ... the environment" at the end of article 22. The first and last phrases of article 23 would thus be dropped.

Articles 24 and 25. As some observers have pointed out (E/CN.4/Sub.2/1989/36, p. 25), these articles are ambiguous. It would be preferable to delete them.

Article 26. It would be more logical to replace the words "with their own kith and kin" by "with members of their people and with other indigenous peoples".

Article 27. It would perhaps be necessary to add at the end of this article the words "and to submit any disputes that may arise in this matter to impartial national or international bodies".

Article 28. In order to strengthen the right of indigenous peoples to individual or collective access to justice, this article could be revised as follows:

> "Effective measures shall be taken to ensure that indigenous peoples, their representatives and their members have effective remedies both at the national and at the international level in the event of violation of their fundamental rights."

Article 29. It would be desirable to add the following sentence at the end of this article:

> "These rights may in no event justify segregationist policies or be exercised in disregard of the principles stated in the Charter of the United Nations and the international instruments of human rights."

Additional article. At the end of this draft declaration there should be inserted the same provision as in ILO Convention No. 169 (art. 35):

> "The application of the provisions of this convention shall not adversely affect the rights and benefits guaranteed to the peoples concerned pursuant to other conventions and recommendations, international instruments, treaties or national laws, decisions, customs or agreements."

C. World Health Organization

WHO notes that the first revised text, Part IV, paragraph 20, asserts the right "... to determine, plan and implement all health ... programmes ...". This right is enshrined in the principles of the Constitution of the World Health Organization. The Declaration of Alma-Ata, 1978, also states that "people have the right and duty to participate individually and collectively in the planning and implementation of their health care". In addition, the World Health Assembly, in resolution WHA41.26, called on all people to make a personal commitment to build self-reliance in the field of health.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/2/Add.1
18 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Working Group on Indigenous Populations
Eighth session
23 July-3 August 1990
Items 4 and 5 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from United Nations organs, specialized agencies and intergovernmental organziations

Addendum

The present document contains information received from the International Labour Organisation, dated 16 July 1990.

GE.90-12447/3963a

ILO activities concerning indigenous and tribal peoples

Since the 1989 session of the Working Group, there has been considerable ILO activity concerning these peoples.

I. Supervision of the application of the Indigenous and Tribal Populations Convention, 1957 (No. 107)

The ILO Committee of Experts on the Application of Conventions and Recommendations examined the situation in three countries that have ratified this Convention, at its March 1990 session. (Note that reports will be due from all 27 ratifying countries on 15 October 1990, for examination by the Committee of Experts at its 1991 session.) Copies of the comments made by the Committee of Experts are attached. Two of these cases were then examined by the International Labour Conference at its June 1990 session.

Bangladesh. While noting certain improvements in the situation of the tribal people, the Committee of Experts asked for further details on the implementation of recent organizational and legal reforms.

Brazil. As reported to the Working Group last year, the Government had asked for a technical mission to visit the country from the International Labour Office, and this visit took place in September 1989. A reflection of the discussions held will be found in the observation made in March 1990 by the Committee of Experts. This concerned in particular the Yanomami Indians; other questions will be dealt with next year. The Government did not, however, meet its obligation to send a report on the application of this Convention. The Committee of Experts therefore asked the Government to report in detail on the measures taken to protect the Yanomami from the invasions of the garimpeiros (gold miners) and from other unauthorized intrusions into their lands. Similar points were raised when the case was discussed in the International Labour Conference (copy of the results of this discussion attached), and the Conference urged the Government to seek the technical assistance of the International Labour Office. Discussions are under way with the Government in this respect.

India. The comments of the Committee of Experts were - as in the case of Brazil - limited to a single issue this year, with wider issues to be discussed next year. The construction of the Narmada Valley dam and power project has raised concerns over the situation of the 60,000 tribal people being displaced, and over the longer-term prospects of the some one million tribals to be displaced at later stages of the project. The Government provided detailed information both to the Committee of Experts and the Conference, which will be examined by the Committee of Experts at its next session. A copy of the report of the Conference discussion is attached.

II. Ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Since the last session of the Working Group, the ratification of this Convention - adopted in 1989 with the collaboration of the United Nations and a number of other international organizations - has been endorsed by a number of intergovernmental and non-governmental (indigenous) gatherings. In particular, an appeal is made for the ratification and implementation of the Convention in the recommendations in the Study on the achievements and

obstacles encountered during the Decades to Combat Racism and Racial Discrimination by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and in the recommendations contained in the Global Consultation on the Realization of the Right to Development as a Human Right organized by the Centre for Human Rights. It was also endorsed by the Inter-American Indian Congress at its tenth session (October 1989).

Convention No. 169 revises Convention No. 107, meaning that the ratification of Convention No. 169 by a country which has ratified Convention No. 107 involves the automatic denunciation of Convention No. 107 - a replacement ratification in other words. Convention No. 107 will however remain in force for countries which have ratified it but not Convention No. 169.

One ratification has so far been received, from Norway, in June 1990. Other countries have indicated that they intend to ratify it. The Convention will enter into force one year after the second ratification.

In November 1989 the Governing Body of the International Labour Office adopted a report form, to be used by ratifying countries when reporting on the implementation of the Convention.

III. Resolution on ILO action concerning indigenous and tribal peoples

This resolution was adopted by the International Labour Conference at the same time that it adopted Convention No. 169. It calls upon the international organizations "to collaborate in developing activities to achieve the objectives of the Convention within their respective fields of competence, and urges the ILO to facilitate the co-ordination of such efforts" (operative para. 5).

Consequently, the ILO invited a number of other international organizations in the United Nations system to attend an interagency technical consultative meeting in Geneva in May 1990, to discuss the issues. The invitation was accepted by the United Nations (Centre for Human Rights), the United Nations High Commissioner for Refugees, the International Fund for Agricultural Development, UNESCO and the World Bank.

The discussions were fruitful and enlightening, and led in the first instance to an increase of awareness among the participants of the activities and capacities of the other agencies in this area. It is intended to continue holding these meetings, under the ILO's general co-ordination, and to search for joint positive responses to the problems posed. Several possible areas of inter-agency co-operation or common action were identified, and these are being pursued between the agencies concerned. It is also hoped to hold further such meetings on a regional basis in the near future.

In the meantime the ILO itself has continued to carry out technical co-operation activities in favour of indigenous and tribal communities.

Convention No. 107: Indigenous and Tribal Populations, 1957

Brazil (ratification: 1965) A Government representative recalled that the Convention was particularly complex and that it was difficult to apply, particularly given the immense Brazilian territory. Indigenous and tribal populations could be found in all parts of the country's territory, but not all the populations had the same degree of civilisation. Their interests and their rights were protected by the Constitution itself thus demonstrating the importance given to their protection. Article 231 of the Constitution of 1988 protected the social organisation, customs, languages, beliefs and traditions of the Indians, as well as their rights to the land which they have traditionally occupied. This provision also defined the notion of land traditionally occupied by the Indians. The Constitution also provided that the use of natural resources (water, minerals and other energy resources) in Indian lands could not occur without congressional approval, in the form of a law, and only after the communities affected had had the chance to express their views. Although the application law mentioned by the Constitution had not yet been elaborated, the Government had taken a certain number of measures on 15 March 1990 to protect the rights of Indians, in particular by expelling the "wildcat" gold miners *(garimpeiros)* from Indian areas with the assistance of the air force. The Ministry of Justice blew up 14 clandestine landing strips using several thousand tons of explosives. The Committee of Experts had noted that, following the measures taken by the Government, the *garimpeiros* expelled from Indian lands moved into Indian lands in neighbouring countries which had not yet ratified the Convention. His Government deplored this and would continue to support any assistance programmes for the improvement of the living conditions of indigenous peoples. This Government opposed all attempts to illegally occupy Indian lands. All cases of illegal occupation gave rise to a police inquiry and the Federal Public Ministry received reports so that they might pursue the case before the appropriate tribunal. By virtue of article 127 of the Constitution, the Federal Public Ministry was authorised to defend law and order, the democratic system and the collective and individual rights of citizens, in particular as concerned indigenous and tribal populations. Any act which could be

considered a violation of these rights was prosecuted within the judicial system. In its report, the Committee of Experts referred to a Federal Court ruling which allocated an area of land for the Yanomami Indians. This ruling had been made on the understanding that the dispersion of the Indians into 19 regions could leave them exposed to the dangers of civilisation. The Yanomami Indians recently benefited from a government assistance plan designed to improve their health. For 45 days, a number of health experts went into Indian lands and gave treatment in five different health centres scattered throughout the national territory. A large number of consulations had been given to treat the illnesses which the Indians were suffering. His Government would not accept that human life and, in particular, the life of Indians should be threatened due to the lack of proper health care. As concerns the administrations of Indian affairs, the National Indian Foundation (FUNAI) had been transferred to the Ministry of Justice so as to ensure better protection of Indian rights.

The Employers' members, after having recalled that this was a case which had been regularly discussed in this Committee since 1981 and every year since 1987, considered that the situation remained worrisome, even if the Government had made considerable efforts. They regretted that, despite the recent visit to the country by a specialist on the question, there had been no reactions from the Government and the report had not been communicated. They emphasised that the main problems in these recent years concerned the fact that the *garimpeiros* entered into Indian lands. There had been armed conflicts and the Yanomami had been the victims of the confrontations between two civilisations, resulting in disease and environmental pollution. The Government had taken various measures to try to relocate the *garimpeiros* into other regions, but these regions were often very close to the lands belonging to the Yanomami and sometimes were even within the reserved lands. It would be useful if the Government would communicate the texts of the decrees which had been adopted in this regard. The central problem was to specifically demarcate the land attributed to the Yanomami in a manner so as to avoid any dispute. The Constitution provided that the exploitation of Indian lands could not occur without congressional approval. It would be useful to know if laws to this effect had been adopted. As regarded the health programme which aimed at preventing the problems encountered, it could only be hoped that such a programme would be rapidly implemented and would be the subject of a detailed report to the ILO. The Employers' members emphasised the need to have precise and complete information on all the problems which had been noted as soon as possible. The Employers' members were of the opinion that the fact that the authority for governing Indian problems had been transferred to a different ministry did not contribute to a rapid settlement of the problem. This was a fundamental question which concerned the survival of a population and necessitated rapid and widespread action. In view of this situation, they urged the Government once again to request technical assistance so that the ILO could send their experts. In view of the complexity and the size of the problem, this assistance would constitute a step in the right direction so as to improve the situation.

A Workers' member of France wondered, given the information which he had recently received, if all the FUNAI authorities or those who acted in its name were truly concerned with helping the Indians. According to different sources of information, it seemed that the *garimpeiros* used facilities which had been furnished by FUNAI, in particular for the taking off or landing of planes thus ensuring the transport of their material. Furthermore, he believed that the Government still let the *garimpeiros* enter Indian lands and that this had happened in recent months. While aware of difficulties due to the vastness of the territory, he urged the Government to supply information on the measures it intended to take to put an end to the above-mentioned situation.

The Government representative emphasised that the activity of the *garimpeiros* in lands reserved for the Indians had never been authorised by the Government. Gold prospecting in Indian territories was forbidden by Act No. 7805 of 18 July 1989, which thus demonstrated that the activity of the *garimpeiros* in these regions was clandestine and has been subject to government measures. He recalled that the decrees mentioned by the Employers' members authorising prospecting activities in these regions specified that these activities had to be carried out in such a way as to ensure that the areas occupied and reserved for the Indians were not violated. In practice, authorisation was given for a very limited territory and was never granted for a territory occupied by the Indians. The *garimpeiros* were not authorised to leave the areas allocated to them. Anyone who violated these provisions was subject to penalties. After having supplied certain information on the administrative organisation of FUNAI, the Government representative recalled that this foundation was now part of the Ministry of Justice. The problems inherent to indigenous populations were not within the competence of the Ministry of Labour. The question of indigenous problems concerned issues of basic human rights, the respect of human life and the preservation of a culture. It was the duty of all society in solidarity, and not simply the Government, to protect and safeguard indigenous communities. Although, in his opinion, the question would continue to be the subject of discussions before this Committee for years to come, he believed it should not be examined in relation to a certain country, but rather as a whole. He wondered if Brazil should request technical assistance from the Office or if it would not be better for the ILO to provide assistance on an on-going basis to all States which needed it, without it being necessary to request assistance or discuss it before this Committee.

The Workers' members regretted that the Government had not communicated a report on the application of this Convention despite the very firm conclusions made by this Committee in 1989. It was even more regrettable that other information was available showing that the situation remained serious and was apparently still not under control. Certainly progress could be noted, new measures had been taken especially concerning the expulsion of the *garimpeiros*. An emergency health plan and co-operative programmes between the Amazonian States had been elaborated. Nevertheless, the situation remained very worrying. Indigenous lands remained under constant pressure, their situation was not clear and certainly the continuous presence of the *garimpeiros* had consequences. It was not known if the *garimpeiros* had really been expelled. Finally, the health problem remained. This Committee, therefore, should recall the conclusions formulated in 1989 and urge the Government to take effective measures in the very near future. This Committee should also insist on the necessity of communicating reports due and should support the suggestion concerning technical assistance.

The Employers' members also recognised that the question would have to continue to be the subject of discussions in this Committee and therefore extensive information would be necessary for future discussion. They requested the Government therefore to communicate a detailed report. Furthermore, they could not understand the refusal of the Government to request ILO assistance. This would only be understandable if the Government representative had brought proof that such assistance would not be useful or even would be harmful which did not, however, seem to be the case. Therefore, they expressed the hope that, on the basis of the discussion in this Committee, the Government would be able to re-examine its position in this regard.

The Government representative, after having recalled that his country needed ILO assistance, insisted on the fact that this assistance be considered as general collaboration given to all countries which needed it, and not as something specific in nature and directed towards one particular country only when requested. He considered, therefore, that technical assistance should continue to be granted on an on-going basis so as to help countries which had indigenous communities resolve their problems. Finally, he indicated that his country's tripatite delegation to the Conference met a few days ago and decided that it would be necessary to establish a tripartite committee in order to draft reports as well as to facilitate the ratification of Conventions and the solution of complaints concerning the application of ratified Conventions. The Government, in collaboration with the employers and the workers, would endeavour to find a solution to the problem of supplying reports so as to provide the ILO and its Committee of Experts with the information necessary for their examination.

A Workers' member of Greece requested – after having seen the report of the Committee of Experts, as well as other documents coming from trade union organisations and other association such as Amnesty International, and after having heard the explanations given by the Government representative – that the Committee express its deep concern at the situation of indigenous populations in Brazil. If measures were not taken, these populations might run the risk of disappearing within the next generation.

A Workers' member of the United States indicated that he had understood, following the Government representative's reply to the question posed by the Employers' members, that the Governmen recognised the need for further ILO technical assistance and thus would seek it. He requested the Government representative to correct his conclusion if it was not accurate.

The Committee took note of the report of the Committee of Experts and of the information provided by the Government representative. It expressed its continuing concern for the problems which remained although the Government had taken measures which apppeared to have improved the situation. It requested the Government to send copies of the relevant decrees and to provide in writing information on the other measures taken so that the Committee of Experts could make a full assessment of the situation. The Committee recommended the Government to request ILO technical assistance in order to help in making further amendments to its legislation and to improve its implementation.

In view of the fact that this matter had been discussed by the Committee at its previous session, and taking into account its deep concern at the rights of indigenous peoples, it expressed the firm hope that it would be in a position next year to note a real change in the situation.

India (ratification: 1958). A Government representative stated that this was the third time this Committee had discussed this case. As regarded paragraph 3 of the Committee of Experts observation referring to the statement of the International Federatin of Plantation, Agricultural and Allied Workers (IFPAAW) that there was a series of development projects already undertaken in India which would involve the displacement of between 2 and 3 million tribal people altogether, and that inadequate provision had been made for their relocation and rehabilitation, the Government representative maintained that the IFPAAW's statement was too general. Even the estimation of the member or persons likely to be displaced did not seem to be based on authentic information. If the IFPAAW could provide full details for all projects and state precisely how the Convention had been violated, the Government would furnish the corresponding information in its next report.

Concerning paragraph 9 of the observation, where the Committee of Experts stated that the costs of the project were apparently particularly heavily on the tribal people and suggested that the costs needed to be reduced or compensated in the proper application of the relevant provisions of the Convention, the speaker said that the Government was committed to bear all the costs of rehabilitation and to compensate the loss of land and other property. Therefore no cost should ultimately fall on the tribal people. Moreover, the Government had offered to rehabilitate the affected tribal people in the command area of the project so that they could share the benefits of the project to the maximum extent. Furthermore, the development and inprovement of tribals was given a high priority in the central and state development plans. For the country as a whole, seven per cent of the total plan allocation was earmarked exclusively for the tribals every year. Similarly, state governments were required to earmark, exclusively for the tribal populations, a percentage of funds which was equal to the percentage of tribal populations in that state. Also, tribals were not excluded from the benefit of remaining plan funds. Thus it could never happen that non-tribals benefited in Indian development plans and projects, to the detriment of tribals.

In paragraphs 11 to 16 of the observation (interpretation of the term "traditional occupation" as used in *Article 11 of the Convention*), the Committee of Experts stated that traditional occupation, whether or not it had been recognised as authorised, did create rights under the Convention. The speaker stated in that respect that his Government was fully committed to honour the rights of tribals arising out of traditional occupation. However, the question remained: what was a "traditional occupation"? The Committee of Experts itself stated that this was an imprecise term, but considered that it clearly conveyed the idea that the lands over which these groups' land rights should be recognised were those whose use had become part of their way of life. The question still remained: since when? That was why the Committee of Experts had been unable to give any categorical opinion as to how much time would have to elapse before occupation could be called "traditional". This term, and also the general question of land rights, had generated much debate during the discussions on the revision of this Convention. Even when the Convention had been adopted, it had been recognised that there would be wide variance in the characteristics of the countries. Hence, *Article 28* laid down that "the nature and the scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country". The fact that such a provision had been retained in the revised 1989 Convention indicated that difficulties of the type discussed still existed. The speaker assured this Committee that, notwithstanding the differing interpretations of the term "traditional occupation", the letter and the spirit in Article 11 of the Convention were being followed. Most Indian states which had substantial tribal populations had enacted laws recognising rights of ownership and possession of tribals over the lands they traditionally occupied. These laws also restrained transfer of land from tribals to non-tribals; lands involved in illegal transfers from tribals to non-tribals were restored to their original holders. Land records not only mention *de facto* possession but also land use. Customary rights, like grazing and hunting, were also protected. Hence, it was not correct to say that tribals who had traditionally occupied lands were being displaced. If specific instances were given of cases where tribals who had traditionally occupied land had been displaced, the state governments concerned would no doubt investigate them; and if the complaints were substantiated, remedial action would certainly be taken. A line had to be drawn somewhere between traditional occupation and unauthorised occupation following identification of lands as government lands.

In paragraphs 17 to 24 of the observation dealing with *Article 12 of the Convention*, the Committee of Experts concluded that "it is evident that the Government has made considerable efforts to resolve an extremely difficult situation". However, the Committee of Experts went on to state that it was not evident from the information available whether the Government had fully succeeded in providing appropriate compensation in accordance with Article 12 of the Convention. The Committee of Experts had also stated that it was not apparent from the information available how much land was required for resettlement as compared with the amount already available. The speaker stated in these respects that the resettlement and rehabilitation policy of the state governments, particularly that of the government of Gujarat, had generally been accepted as one of the most liberal and innovative policies in the world. The policies of the three state governments concerned had been handed over to the Office, in case any member of the present Committee wanted to see them. Referring to the extent of the problem and how it was addressed in the three states, the speaker submitted the following figures: in Gujarat 19 villages regrouping 3,222 families were affected; 7,000 hectares of land were required. In addition, Gujarat had ageed to resettle the willing oustees from the states of Maharastra and Madhya Pradesh. There was no problem of availability of land in this case. In the state of Maharastra: 33 villages regrouping 1,665 families were affected; 2,700 hectares of land were required for 1,369 families which had opted to resettle in Maharastra only. Efforts were being made to utilise forest land for their resettlement. The remaining 296 families had agreed to resettle in Gujarat and in fact 179 families had already resettled ther3e; the land for the remaining 117 families had been identified. In the state of Madhya Pradesh: 193 villages regrouping 14, 994 families were affected; 8,854 families would be completely affected and 6, 140 partially affected; 15,080 hectares of land were required, of which 2,083 hectares were required in Madhya Pradesh itself and 13,000 hectares in Gujarat. As already mentioned, there was no problem of land in Gujarat and, in fact, the officials of the Madhya Pradesh government had already approved 222 hectares of arable land and another 2,904 hectares of private land. Another 549 hectares had also been seen and accepted by Madhya Pradesh oustees. In addition, joint inspection of lands in Gujarat was in progress. In Madhya Pradesh itself, the state government had identified 1,489 hectares of land of resettlement. The requirement of an additional 594 hectares would be no problem. Moreover, as many as 118 villages would not be submerged before 1998.

As regards paragraphs 26 to 28 of the observation (mortality of displaced tribals; environmental questions), the speaker stated that the Government of India would keep the Committee of Experts informed about the action taken by state governments concerning health care of the resettled; it was his understanding that the information on general questions raised by the Committee of Experts in paragraph 28 of the observation would be incorporated in the periodic reports ont the Convention.

The speaker concluded that his Government was fully committed to the welfare of tribal people and that there were ample constitutional safeguards to protect and further their interests. The Indian Government would welcome any constructive suggestion and if complaints were found to be substantiated, remedial action would indeed be taken. The World Bank, which was closely monitoring the project in question, considered that the benefits of the Sardar Sarovar project were so large that they substantially outweighed the social and other costs involved: there were no reasons why the World Bank's assessment should be doubted in any way.

The Workers' members noted the goodwill and good intentions shown by the Government in its comprehensive report concerning this complex case. They noted, however that the Committee of Experts considered that the Government had not taken all the steps necessary to resettle the tribals, as required by Articles 11 and 12 of the Convention called for recognition of the right of ownership of traditionally occupied lands, the Government had taken the position that Government-owned lands which had been "encroached upon" were not traditionally occupied and therefore there was no obligation to resettle or compensate. Partial measures had been taken in the state of Gujarat but much less had been done by the states of Maharastra and Madhya Pradesh. On this basis the Committee of Experts had expressed concern at the situation of the some 60,000 tribals who were to be immediately displaced in the short term and some 1 million who were to follow. A solution still had to be found to this situation. A second issue involved the adequacy of lands available for resettlement: only one state had taken positive action in an effort to resettle the affected tribals. The magnitude of the problem was shown by the large number of persons involved. Based upon the well documented comments of the IFPAAW, the Workers' members expressed

deep concern at the situation, despite the fact that some progress had occurred. The Workers' members called for continued intensive action by the Government.

The Employers' members considered that the sheer size of the population affected by the development scheme required the Government to make a massive effort to resolve the issues which had arisen. Although the Government had to assess the value of the project on an overall basis, the present Committee was required to seek, through dialogue, full information on what had bee done to apply the Convention. The Government had co-operated this year, as it had in the past, by providing complete information and the Employers' members hoped this would continue. The problems of ownership had met with different responses in different states: while a distinction could be made between traditional occupation and encroachment, the question was where should the line be drawn. Even the Committee of Experts had been ambiguous in this regard; and the present Committee could not give a definitive answer. Even if this question were answered, there was a doubt that sufficient resettlement lands existed. The Employers' members joined the Committee of Experts in asking the Government to continue to make all possible efforts to resolve these issues. Comprehensive, long-term measures needed to be considered. In addition to the equivalency of replacement lands, these solutions would need to take health issues into account. These measures would have to develop over time as the number of people to be displaced increased. The Committee would have to continue its review of developments in this case.

The Government representative noted the observations made by the Employers' and Workers' members. The Government had given full consideration to the costs and benefits of the development project and it was fully committed to ensuring that costs were fairly distributed and that both tribals and non-tribals were adequately compensated. The speaker explained that the controversy relating to traditional occupation versus the encroachers arose out of the Gujarat Government's commitment to rehabilitate even the encroachers. The Committee of Experts then expressed its concern that traditional occupants should not be called encroachers. The speaker explained that there was no question of the traditional occupants being called encroachers. However, a distinction had to be drawn between the former and the latter. Those who occupied the lands traditionally would be compensated; only those who recently occupied clearly demarcated government lands would be designated "encroachers" but would still be rehabilitated within the announced policy. Where issues arose on a case by case basis – if for instance, there was bona fide encroachment on clearly designated dormant lands – the Government was committed to settling them fairly, within the requirements of the Convention applying the traditional occupation test. With respect to the availability of resettlement lands, the speaker stressed that, as far as possible, lands would be provided for rehabilitation, also taking health care into account. The Government was aware that the progress of rehabilitation measures had been more in Gujarat than in the other States. The matter was being reviewed constantly.

The Workers' members stressed the need for uniformity in measures taken by the states affected by the project.

The Committee took due note of the detailed information supplied by the Government representative. It welcomed the Government's good intentions to achieve full conformity with the Convention and to give all the information requested. Recalling the concern it had always shown towards the rights of indigenous and tribal peoples, it hoped that the Government would do whatever was in its power on their behalf.

Convention No. 107: Indigenous and Tribal Populations, 1957

Bangladesh (ratification: 1972)

1. The Committee notes the Government's most recent report, for the period ending 30 June 1989, and the detailed information which it supplied to the Conference Committee at its 1989 Session. It notes further that it has now received copies of the 1989 legislation on the Hill District Local Government Councils, of which it was informed before its last session.

2. The Committee notes with interest that the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities decided, during its 1989 Session, to thank the Government of Bangladesh for its co-operation and express its satisfaction with the progress made in respect of its treatment of tribal populations.

3. The Committee points out that it is aware of a continuing problem of inter-ethnic conflict in the Chittagong Hill Tracts. It also continues to receive allegations from various sources, including information submitted to various United Nations human rights organs, of abuses of human rights in this region. While it treats such reports with caution, it remains concerned over the practical application of the Convention and hopes that the Government will be able to provide detailed information in this regard in its next report.

4. In its 1989 observation the Committee raised a series of questions, concerning each of which the Government provided information to the Conference. It therefore follows the same format for its present comments.

5. Special laws and regulations in force in the Chittagong Hill Tracts. The Committee notes that it has now received copies of the Hill Districts Local Government Council Acts, 1989, for the districts of Bandarban, Khagrachari and Rangamati, as well as of the Hill Districts (Repeal and Enforcement of Law and Special Provision) Act, 1989. It notes with interest that the Government representative informed the Conference Committee that each of the named districts is

to have its own elected council with a built-in majority of tribal members and a tribal chairman. He stated that the councils are to be responsible for civil administration, including the appointment of police up to the assistant superintendent level; and to have control over land transfers and the power to levy taxes. The Government has indicated in its report that the elections for these councils took place on 25 June 1989, and that the district councils have started functioning.

6. The Committee notes that it has also received information from other sources, including a number of non-governmental organisations, to the effect that the new legislation was adopted without consultation of representatives of the tribal people, and that therefore the level of participation of the tribal people in the elections was very low. This information also states that the area under the control of the new local government structures is less than 10 per cent of the total area of the Chittagong Hill Tracts. It states in addition that by adopting the Hill Districts (Repeal and Enforcement of Law and Special Provision) Act, 1989, which repealed the Chittagong Hill Tracts Regulation (No. 1 of 1900), the Government has removed existing legal protections for tribal people in these areas and thereby given legitimacy to the settlement of non-tribal people in these areas, which until now was illegal. The Committee is not in a position to judge the accuracy of these statements on the basis of the information available to it. It therefore requests the Government to provide any comments it may have on this information, in particular on the geographic area covered by the new councils, and on the termination of the prior rights of the tribal people.

7. Recommendations of the National Committee on the Chittagong Hill Tracts. In its previous comments the Committee asked the Government to indicate what recommendations this Committee had made, and how they were being implemented. The Government representative informed the Conference Committee in 1989 that the National Committee continues to function, and that it makes recommendations which may form the basis of administrative or legislative arrangements. The Committee recalls that the National Committee was formed to make recommendations on how to resolve a severe crisis in the Chittagong Hill Tracts, and that its recommendations formed the basis for the new legislation mentioned above. It hopes that the Government will provide information on the present functioning of this National Committee, on its recent activities, and on the action that may have been taken as a result.

8. The Committee notes also from reports in Bangladesh newspapers that a Special Committee on Hill Tracts Districts was established in August 1989, chaired by the Prime Minister. Please indicate the relation between this Special Committee and the National Committee, and in particular whether the latter continues to function. Please also indicate what activities the Special Committee has undertaken and the results achieved.

9. The situation of land ownership. In its previous comments, the Committee has noted that one of the principal causes for unrest in these areas has been migration of non-tribals into areas previously occupied exclusively by tribals, and their acquisition of land rights. It notes from the information supplied by the Government that

transfer of land ownership in these areas is now, under section 64 of each of the Council Acts, under the exclusive control of tribal-run local government authorities. It notes further the statement that the cadastral survey of land ownership and use which had been mentioned in earlier reports, was suspended at the request of the tribal leaders but was to resume after the council (Parishad) elections in June 1989. Please indicate whether this survey has now been carried out, and what are the results. As concerns the transfer of land rights under the control of the councils, the Committee refers to its question above concerning the area under the effective control of the councils; it asks the Government to indicate whether there are areas in the Chittagong Hill Tracts in which the transfer of land rights is not controlled by the councils, and what measures govern the transfer of land rights in such cases.

10. Progress made in settling landless tribals. In its previous comments the Committee requested information on the progress made in settling landless tribals, as recommended by the National Committee. The Government representative indicated to the Conference Committee that the Government had adopted programmes for settling landless tribals on government-owned land, and that a few hundred families had been settled under this programme. It was hoped that the process would be accelerated once the councils were established. The Committee therefore requests the Government to provide information on the present situation in this regard, indicating in particular the numbers of landless tribals and the amount of land allocated to them.

11. In this connection, the Committee notes the provisions of the Hill Districts (Repeal and Enforcement of Law and Special Provision) Act, 1989, concerning jhum cultivation (i.e., traditional shifting agriculture by tribals). It notes that under section 7 of the Act, the Deputy Commissioner has the power to control jhum cultivation and to issue and enforce the necessary orders for this purpose, and to prohibit jhum cultivation in any area. Under section 15 there are provisions for the occupation of rural lands for homesteads, under the control of the headman or of the Deputy Commissioner. The Committee would be grateful if the Government would indicate the relationship between the control granted under this Act over the disposition of land rights of tribal people, and the control granted under the Council Acts to the councils themselves over land rights. Please indicate what rules the Deputy Commissioner may have issued in this respect.

12. The Committee notes further that under section 11 of the same Act, each headman is to establish a jhum touzi, or rent roll of jhum cultivators. This should facilitate the provision of the information requested above on the number of landless tribals and on land ownership.

13. Procedures for consultations with tribals in the planning and implementation of development programmes. The Conference Committee was informed that the councils would be able to decide on the priority and type of projects which would best help to improve the socio-economic conditions of the population of the area. The Committee notes from the Acts that under the First Schedule of each Act (Functions of the Council), the council is responsible for the co-ordination of development activities of the local authorities and

review of the implementation of their development projects (section 2); and the implementation of the development programmes entrusted to the council by the Government (section 17). It notes that while the authority exists to carry out their own development projects, there is no procedure provided for in these Acts for consultations on development projects implemented by the national Government in these areas. It notes further from newspaper reports from Bangladesh that the Special Committee on Hill Tracts Districts created in August 1989 (see paragraph 8 above) reviews the overall development activities of the three local government bodies and that it has discussed the framing of rules and regulations for their functioning. The Committee would therefore be glad to receive detailed information on this matter in the next report, with particular reference to any procedures which may have been implemented.

14. Independent investigations into alleged human rights abuses. The Committee had previously requested information on measures taken in this respect, and on tribal participation in such investigations. The Government representative informed the Conference Committee that joint investigation committees were formed immediately after any alleged incident, and that this procedure had been in operation since August 1988. The Committee notes that it has continued to receive from non-governmental sources, allegations of abuses in the Chittagong Hill Tracts, arising mostly from the effects of settlement of non-tribals in these areas. It therefore requests the Government to communicate information on the practical working of this procedure, the number of such committees formed, and the results obtained.

15. Progress in achieving a negotiated settlement of the conflict and the return of tribal refugees. The Committee had previously noted the continuation of conflicts, sometimes violent ones, in the Chittagong Hill Tracts, and that many thousands of tribal refugees had fled to India. The Government representative informed the Conference that the Government was continuing to facilitate the repatriation of tribal people, and had declared an amnesty for terrorists in order to facilitate this process. The Committee notes that no additional information was contained in the Government's report. It notes however from newspaper reports in Bangladesh that further amnesties have been declared, and that there were plans to hold talks concerning the return of tribal refugees between the Governments of Bangladesh and India. It notes further, from these newspaper reports, that rehabilitation programmes have been established for those tribals who do return. The Committee therefore requests the Government to provide information on: (a) the number of tribals who have not yet returned to their homes; (b) talks between the two Governments concerned and other measures taken to facilitate the return of the tribals; and (c) generally, on the security situation in the Hill Tracts and on measures to create a situation in which the tribals will wish to return. Please also indicate what measures have been taken for the resettlement and rehabilitation of tribals who have returned to Bangladesh.

16. Situation of other tribal populations of Bangladesh. The Committee recalls that it has paid particular attention in recent years to the situation of the tribal people in the Chittagong Hill

Tracts, but that there are a number of other tribal people in the country. It therefore hopes that the Government will provide information in its next report on these groups, and on any measures which may have been taken in regard to their situation.

Brazil (ratification: 1965)

1. The Committee notes with concern the information it has received about the situation of the Yanomami Indians, and hopes that the Government will shortly be in a position to indicate that it has taken effective measures for their protection.

2. The Committee notes the detailed information provided by the Government to the Conference Committee on the Application of Standards at its 1989 Session, and the discussion which took place there. During that discussion, the Government asked that a specialist on indigenous populations and legislation accompany the Regional Adviser on International Labour Standards when he next visited the country. This visit took place in September 1989.

3. The Committee notes with regret that the Government's report has not been received. As the situation of the Yanomami in particular appears to be extremely vulnerable, the Committee is obliged to analyse the situation on the basis of the information available to it.

4. Invasion of Yanomami lands by gold miners. The Committee recalls that it noted in its previous comments that the lands of the Yanomami had been invaded by "wildcat" gold miners (garimpeiros). It notes from information provided to the representative of the Director-General during his visit to these regions, that some 45,000 garimpeiros were illegally in Indian lands. The Committee notes that the presence of these miners has caused severe damage to the Indians with whom they have come into contact, through the spread of disease and environmental pollution, as well as armed conflicts resulting in death or injury for many Indians and the disruption of their cultures.

5. The Committee notes that in January 1990 the Government ordered the expulsion of these miners from Indian areas, and the creation of an emergency health programme for the Yanomami. It notes that the Government at first planned to relocate the miners into the region surrounding the 19 areas designated for the use of the Yanomami (see previous comments); but that a federal court ruling of 20 October 1989 had declared that the areas into which the garimpeiros were to be moved should have been designated Indian Areas (see below). It appears that subsequently, the Government has decided to relocate the miners to other areas. The Committee notes in this connection the creation of the prospecting reservation of Uraricaa Santa Rosa by Decree No. 98,890 of 25 January 1990, outside the Yanomami territory, but near to it, and requests the Government to forward a copy of this Decree. It also notes, however, creation of the Catrimani-Couto Magalhaes prospecting reservation by Decree No. 98,960 of 15 February 1990, and of the Uraricoeira prospecting reservation by Decree No. 98,961 of the same date, which appear to be within Yanomami territory. Please provide detailed information in this connection.

6. It appears that substantial progress has been achieved in evacuating the garimpeiros from Yanomami areas; but the Committee has

also received reports of resistance to expulsion, and of returns to Indian Areas by expelled miners. It also notes reports that some miners are moving to other regions inhabited by India[illegible]opes that the Government will be able to indicate in the ve[illegible]ture that all the persons illegally in Indian Areas have l[illegible], [illegible] that their access to these areas is effectively prevented unless authorised.

7. Health emergency for the Yanomami. The Committee notes that an emergency health plan for the Yanomami was approved by Congress in January 1990 at the request of the President. The Committee hopes that the Government will do everything in its power to offset the damage to the health of these groups resulting from the presence of the garimpeiros, and that it will soon be in a position to indicate that adequate health-care services are being provided in accordance with Article 20 of the Convention.

8. Reservation of lands for the Yanomami. The Committee has noted in its previous comments that, after consideration of a plan to create the Yanomami Reserve covering an area of several million hectares, the Government decided to designate 19 non-contiguous regions as those where the Yanomami had rights. It notes from the information assembled by the representative of the Director-General when he visited these areas in September 1989, and from other sources, that this decision has been criticised as being damaging to the interests of the Yanomami in removing much of their traditional territory from the regions designated for their use, and by allowing the presence of garimpeiros in closely adjacent areas. It notes also, as indicated above, a federal court ruling on 20 October 1989 that an area of 9.4 million hectares previously delimited for Indian use, should have been allocated to the Yanomami, and requiring the situation to be re-examined. The Committee hopes that it will be possible to designate an appropriate area for the exclusive use of the Yanomami, and that the Government will shortly be able to provide detailed information on the results of this court action.

9. Exploitation of resources in Indian Areas. The Committee recalls that in its previous comments it noted that Decree No. 88,985 of 10 November 1983 allows the Government to grant authorisation to exploit mineral resources in Indian Areas; but that article 231(3) of the Constitution adopted in 1988 provides that authorisation for resources exploitation on Indian lands can take place only with the agreement of the national Congress. It asked for information on the legislation adopted to implement this provision of the new Constitution.

10. The Committee notes that at least two pieces of legislation have been adopted since the discussion in the Conference Committee in 1989. A law on prospecting (Act No. 7,805) was enacted in July 1989, and was subsequently amended by Decree No. 98,812 of 9 January 1990. The Committee has received the text of neither law, though it understands that provisions protective of Indian lands have been included, and it hopes that the Government will be able to provide detailed information in this regard in the very near future.

11. Responsibility for administration of Indian affairs (Articles 2 and 27 of the Convention). The Committee recalls that the National Indian Foundation (FUNAI) is responsible for Indian affairs, and that it has been located within the Ministry of the Interior. The

Committee notes from recent information that FUNAI will be transferred to the Ministry of Justice; it also notes that responsibility for designating land rights in Indian Areas will be transferred to the Federal Public Ministry. The Committee would be grateful if the Government would forward detailed information on the new administrative arrangements for the protection of the Indians, and on the relationship between the bodies concerned.

12. Possible technical assistance. The Committee notes from the report of the visit of the representative of the Director-General that he held preliminary discussions with FUNAI on the possibility that the ILO might provide technical assistance for the application of the Convention, and that further discussions were held in this connection with other ILO officials subsequently. The Committee notes the size of the task facing the Government in implementing the Convention and in protecting the Indian populations of the country. It refers in particular to the resolution on ILO action concerning indigenous and tribal peoples, adopted by the International Labour Conference at its 76th (1989) Session which, among other things, calls upon the ILO to develop technical co-operation programmes and projects that will benefit indigenous and tribal populations. The Committee urges the Government to consider whether international assistance might be helpful to it, especially in the light of the considerations outlined above, and to discuss the matter further with the International Labour Office.

13. In this connection the Committee notes with interest the adoption of the Declaration of San Francisco de Quito on 7 March 1989, in the context of the Amazon Co-operation Treaty. It notes the creation of Special Commissions on the Environment and on Indigenous Populations, providing for co-operation among Amazon States in these regards. The Committee notes further, in connection with its comments above, reports that the garimpeiros expelled from the Yanomami areas in Brazil may have gone to neighbouring countries which have Indian populations but which have not ratified the Convention. The Committee requests the Government to keep it informed of any arrangements it may make for co-operative programmes for the benefit of Indians in the context of the Amazon Co-operation Treaty.

14. As noted above, no report on the application of the Convention has been received from the Government. The Committee notes that the situation of the Yanomami is only one of the severe problems affecting the indigenous populations in the country, and that it had addressed a number of requests in this respect directly to the Government. It is therefore obliged to repeat these comments, and hopes that the Government will provide detailed information in reply, in time for an examination at the Committee's next session.

India (ratification: 1958)

1. The Committee recalls that in its previous comments over several years - most recently at its 1988 session - it has examined the planned displacement of some 60,000 tribals from the lands they occupy because of the construction of the Sardar Sarovar Dam and Power Project (SSP). This is the first stage of a much larger project which

will, it is said, involve the eventual displacement of over 1 million tribals. The Project is financed by the World Bank. The Committee has had before it on several occasions observations from the International Federation of Plantation, Agricultural and Allied Workers (IFPAAW), forwarding material received from the non-governmental human rights organisation Survival International for the Rights of Threatened Tribal Peoples.

2. The Committee notes with interest the detailed information provided by the Government to the Conference Committee in 1988. It has received from IFPAAW and forwarded to the Government further communications dated 27 February, 23 October and 20 December 1989; and has received the Government's observations on them in a letter dated 24 January 1990. The Committee has also received information from the World Bank, in a letter dated 2 February 1990.

3. The Committee takes special note of a statement in the IFPAAW communication of 31 October 1989, according to which there is a series of development projects already undertaken or planned in India which would involve the displacement of between 2 and 3 million tribal people altogether; and that inadequate provision has been made for their relocation and rehabilitation. The Committee requests the Government to provide any comments it may wish to make on this statement in its next report.

4. The Committee recalls that the SSP will displace tribal people in three Indian states: Gujarat, Maharastra and Madhya Pradesh. Each state has made separate arrangements, under agreements with the World Bank, for dealing with the displaced tribals and for the other consequences of the Project.

5. The Committee thanks the Government for the comprehensive information it has provided at each stage of the examination of this question.

6. Article 6 of the Convention. IFPAAW has stated that the arrangements in place do not satisfy this Article of the Convention, which provides that:

> The improvement of the conditions of life and work and level of education of the populations concerned shall be given high priority in plans for the overall development of areas inhabited by these populations. Special projects for economic development of the areas in question shall also be so designed as to promote such improvement.

7. In its 1988 observation the Committee stated that "the question of whether these arrangements meet the requirements of Article 6, is still not ripe for a final evaluation, as it depends largely on what is concluded with respect to the other issues raised." In its January 1989 comments, IFPAAW stated that the Project is "designed to provide power and water for more settled populations; its benefits are not oriented at all towards the tribal people being displaced, which appears in itself to violate ... Article 6". IFPAAW refers also to the experience of tribal populations displaced by similar projects (e.g., the Tawa and Bargi dams) and the limited resources made available for compensation. It also states that the kind of forced development likely to result from the tribal peoples' displacement is of a kind least likely to lead to an improvement in their conditions of life and work.

8. The Government states in its comments that when completed, the SSP will benefit tribal and non-tribal persons equally, and that the central and state governments are fully committed to the overall socio-economic development of the tribal people. The Government states that this Article does not preclude economic development efforts affecting both tribals and non-tribals, and outlines the benefits expected to result, including relief of drought-prone areas, irrigation, water supply to industries, electricity supply, and employment through new industrial and agricultural undertakings.

9. The Committee notes the points made, and agrees that this Article does not preclude economic development efforts which assist both tribals and non-tribals. It appears in this case, however, that while both tribals and non-tribals are likely to enjoy some of the benefits of the SSP, the costs of the project are falling particularly heavily on the tribal people of these three States. Whether these costs can be reduced or compensated depends on how the other Articles concerned are applied.

10. Article 11. In its previous comments, the Committee noted the contention of IFPAAW that the arrangements made for compensation for displaced tribals did not fully apply this Article, which reads:

> The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised.

11. IFPAAW stated that compensation was being paid only for lands to which the displaced tribals had title, or another recognised right, and not for all those which they occupied. It recalled that many of the tribals use - for cultivation, grazing or gathering of forest products - lands to which they have no recognised title. The Government indicated that the State of Gujarat had decided to grant title to those tribals who "encroached" on government-owned land for cultivation, so that they would be compensated for this land when they are displaced (with this compensation in turn to be applied to paying for the acquisition of land in their place of settlement). IFPAAW stated in turn that 80 per cent of the affected tribals live in the other two States covered by the projects, and that no such arrangements had been made there; that the kind of ex gratia payments made by the Government of Gujarat avoided recognising that the tribals had any prior rights; and that no provision had been made for the hunter/gatherer elements of the tribals' economic life, but only for settled cultivation. The Government indicated in turn that a distinction had to be made between the traditional occupation covered by this Article, and unauthorised occupation of government lands; to require such special measures for encroaching persons would be to misconstrue Article 11.

12. The Committee noted in its 1988 observation that traditional occupation conferred land rights under the Convention, whether or not title had been recognised; and that even if occupation was recent, this did not mean that no land rights existed, especially in view of Articles 12 and 14 of the Convention. It also did not mean that the tribals affected should be excluded from the protections offered to those being displaced by the SSP. It asked for additional information on the measures being taken in Maharastra and Madhya Pradesh, and

expressed the hope that all those being displaced could be provided for.

13. The Government informed the Conference Committee in 1988 that it did not agree that recent occupation of government-owned lands conferred any land rights at all on tribals. Encroachment could not be considered as "traditional occupation" in the sense of Article 11, or as "habitual occupation" in the sense of Article 12. The Governments of Maharastra and Madhya Pradesh had recently updated their rehabilitation policies along lines similar to those of Gujarat, and the Government of Gujarat had decided that all those who wished to resettle in that state would be given equal treatment, with full land titles.

14. In its communication of 24 January 1989, IFPAAW stated that the distinction between traditional occupation and encroachment on state-owned lands is arbitrary, since even when the tribals came under British rule in the nineteenth century, some of the lands they occupied were titled and some were not. Many of the tribals had been occupying these lands for a very long time without recognition, and this applied especially to the Reserved Forest in the Narmada Valley. In addition, most of the tribals have a mixed economy that extends well beyond any lands to which they might have title. IFPAAW states that Article 11 therefore applies to forest and waste lands as well as to settled lands.

15. In its communication of 24 January 1990, the Government states that the allegation concerning those who occupied land even before British rule is too general to warrant comment. The Government repeats its understanding that Article 11 of the Convention "in no way permits unauthorised occupation of Government lands, as such occupation cannot ... be deemed to be traditional occupation." The Government refers to its commitment to recognising title to lands traditionally held by tribals, and to legislation enacted to control alienation of tribal lands and to restore alienated tribal lands. The National Forest Policy of 1988 recognises that a primary task of all responsible for forest management should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around them, and the customary rights and interests of such people are to be fully safeguarded. Finally, the Rehabilitation and Resettlement policies of all three State governments provide for allotment of land to families which have been cultivating Government waste and forest lands without authorisation, and Maharastra has regularised all unauthorised occupation occurring before 31 March 1978. Both Maharastra and Madhya Pradesh now provide that encroachers and families having legal title will be treated on the same footing for the purpose of entitlement to compensation and for rehabilitation. As concerns Maharastra, the Committee notes Resolution No. RPA-3188/CR-130/88/R-5 of 29 June 1989, containing the Policy concerning Rehabilitation and Resettlement of Oustees. The Policy lays down rules for compensating oustees for their land holdings, their resettlement and the acquisition of alternative lands in Maharastra or Gujarat, compensation of "encroachers" for the lands they occupied, and other elements of compensation and rehabilitation. It also provides for the financing of the scheme. The Government has forwarded

a similar document, dated November 1987, adopted by the Government of Madhya Pradesh (which however includes no provisions on financing the arrangements specified).

16. The Committee notes with interest the detailed information provided by IFPAAW and by the Government. It cannot fully accept the distinction drawn by the Government between traditional occupation and encroachment. Traditional occupation, whether or not it has been recognised as authorised, does create rights under the Convention. In addition, use of forest or waste lands, title of which is held by the Government for hunting and gathering - again, whether or not this has been authorised - satisfies the use of the term "occupation", and if it is traditional it meets the requirement of this Article. The term "traditional occupation" is imprecise, but it clearly conveys that the lands over which these groups' land rights should be recognised are those whose use has become part of their way of life. The Committee is not prepared to judge, in the context of the present discussion, how much time would have to elapse before occupation would become "traditional"; nor does the Committee have available to it information which would allow it to decide that traditional use has not been recognised in any particular situations. However, to the extent that the indications provided by IFPAAW are accurate, they would create a presumption of land rights under the Convention. The Committee notes that, as IFPAAW has indicated, no compensation has been allocated for tribals who carry out hunting and gathering, as opposed to settled cultivation. The Committee hopes that, in deciding on the land rights giving rise to compensation, the Government will ensure that the cost of the project does not fall heavily on these helpless and already impoverished tribals, and that they are not deprived of the means of subsistence which they have had for many years. The Committee hopes that the Government will adopt an interpretation consistent with the spirit of this Article of the Convention as well as with its letter.

17. Article 12. The issue here relates to Article 12, paragraph 2:

> When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.

18. The issue of the land rights which these groups already have, is important because under arrangements concluded with the World Bank by each of the State governments concerned, this will determine what lands or other compensation displaced tribals receive when resettled. The Committee has already considered the question, raised by IFPAAW in earlier comments, of whether there is sufficient land available of acceptable quality to allow the resettlement of all 60,000 tribals who are being displaced from their lands; and whether the other measures being taken are adequate to meet the requirements of the Convention and the objectives of the resettlement and rehabilitation components of the credit agreement with the World Bank. The Committee noted in its previous comments that the

Government was making real and considerable efforts in this connection, but that problems persisted. It noted in particular that, while Gujarat State had made lands available and provided for rehabilitation efforts, the other two states had done much less although 80 per cent of the tribals to be displaced live in Madhya Pradesh and Maharastra. The Government informed the Conference Committee in 1988 that all the displaced tribals who were willing to settle in Gujarat would be treated equally. Efforts were being made by the three states to buy large tracts of land of acceptable quality so that resettlement of the "oustees" would not be fragmentary and their communities would not be dispersed. Relocation to Gujarat had been proposed as it was there that new lands were to be brought under irrigation, but oustees would be settled in their own states if they preferred.

19. In its comments of 24 January 1989, IFPAAW stated that the lands provided in compensation should be similar to those from which the tribals are being displaced, so the tribals should have proximity and access to forest lands. However, IFPAAW points out, a policy statement of 8 September 1987 issued by the Ministry of Environment and Forests states that "No forest land will be used for the rehabilitation of oustees," while the World Bank has stated in a letter of 28 June 1988 that "forest for forest" compensation is not always appropriate or realistic. In addition, says IFPAAW, there is already a problem finding enough agricultural land to compensate the oustees, and forest land is in even shorter supply. It indicates further that pressure is being put on oustees in Madhya Pradesh to accept compensation in money rather than in land if they do not choose to be resettled in Gujarat.

20. As concerns the situation in each state, IFPAAW notes that under the December 1987 Resolution, each oustee family from Gujarat is to be granted land and other rehabilitation benefits; and in June 1988 these provisions were extended to oustees from Maharastra and Madhya Pradesh who choose to settle in Gujarat. (IFPAAW also states that most of the tribal oustees do not wish to settle in Gujarat, and have the right not to do so under the Narmada Water Disputes Tribunal Award of 1979.) However, it states that the Gujarat Government has acquired only 20 per cent of the land needed to resettle the oustees from Gujarat itself; prices are rising; and acquisition of further lands will in itself cause more evictions. In Maharastra, planning for resettlement is underdeveloped; finding land has proven difficult, and the Government has decided not to release Forest Department land. On the other hand, an August 1987 resolution followed the example of Gujurat in deciding to make ex gratia payments to "encroachers". In Madhya Pradesh, where the majority of the displaced tribals live, IFPAAW states that arrangements are very rudimentary and almost no action has been taken.

21. The Government has indicated in its comments that all the oustees are entitled to compensation for land owned or "encroached" by them for agricultural or non-agricultural purposes. It is the policy of the Government not to allot forest land for rehabilitation, but when oustees insist on resettlement in forest areas such requests are considered symapathetically. The tribals are being provided special facilities for rehabilitation not made available to other oustees.

Availability of land in Gujarat is not a problem, and a good deal of land is already being acquired. As for Maharastra, 269 families of oustees are willing to accept settlement in Gujarat, and 179 already have their land. It is not correct to say that planning for resettlement is undeveloped in this state; as 1,358 families have decided to remain in Maharastra the Government is "duty bound" to provide them with alternative lands. In Madhya Pradesh, where the majority of those to be displaced live, an initial policy was adopted in 1986; and after consultations with the central Government and the World Bank a detailed policy was issued on 18 May 1989. Of the 193 villages in this state which will be affected in varying degrees by submergence, oustees from 92 of them will be resettled in Madhya Pradesh close to their present lands. In 77 villages, oustees are willing to go to Gujarat provided they are given appropriate land. Some land has already been approved by the oustees, and the Government of Gujarat is making every effort to find additional suitable land.

22. The letter of 2 February 1990 from the World Bank indicates that the situation with respect to resettlement and rehabilitation is improving, as a Bank mission found in December 1989. More than 1,000 oustees have been allotted land in Gujarat, the planning and implementation mechanisms seem to be working very well and additional land for resettlement, including relatively large quantities of irrigable land, is coming on to the market. In Madhya Pradesh, the Bank indicates that the situation is also improving, though much remains to be done. Although the "initial submergence date" has been set back to 1994-1995, detailed planning has taken place in the first villages to be affected, village leaders have visited Gujarat and some villages have decided to move there. The situation in Maharastra is troublesome in that forest land is needed for the initial resettlement. Government clearance is being sought for this. The Bank indicates that progress is being made, and that it continues to work closely with state and project authorities to try to ensure that it continues.

23. The Committee has examined the detailed information supplied by IFPAAW and by the Government on the compensation being offered to the displaced tribals, as well as the information supplied by the World Bank. It is evident that the Government has made considerable efforts to resolve an extremely difficult situation; it is not evident from the information available whether it has fully succeeded in providing appropriate compensation in accordance with Article 12 of the Convention, for all the families and villages which are losing their lands as a consequence of this project. The Committee would affirm that the words "lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development" would create a presumption that displaced tribals should receive agricultural lands for lost agricultural lands, and forest lands for lost forest lands. The Committee recalls that this provision goes on to provide for alternatives if the groups concerned prefer, so that there is room for discussion of the appropriate form of compensation.

24. The Committee therefore requests the Government to continue to communicate detailed information on the further progress achieved in providing land and other compensation to the displaced tribals. It

notes the Government's statement, in its January 1990 communication, that "It is expected that by March 1991 the entire rehabilitation of total project-affected 3,322 families would be completed as per liberalised norms. The Government of India firmly believes that there has been no violation of Convention No. 107 and that the Project, when complete, would help the tribals to improve their standard of living." It is not apparent from the information available how much land is required for resettlement as compared with the amount already available, and the Committee would be grateful for information in this respect.

25. The Committee feels bound to repeat the concern which it expressed in its previous comments as to whether it will prove possible to provide the same kind of compensation in the future as is planned in the present case, when many times more tribals - up to 1 million according to the information it has received - are scheduled to be displaced from their homes. Given the problems encountered in this relatively small-scale project, the Committee considers that it may be very difficult to provide protection to the tribal populations in conformity with the Convention if the full-scale project is undertaken in the same conditions.

26. Mortality of displaced tribals. IFPAAW has stated in its communication of 23 October 1989 that "Studies in the few communities of tribals who have already been resettled show a four-fold increase in mortalities." The Government has stated in its communication of January 1990 that this report has been studied by the Government of Maharastra, and that the mortality rate is normal for poor tribals though higher than the national average. The Government has stated that the Government of Gujarat has taken steps to provide health care to resettled oustees. The Committee requests the Government to keep it informed of the progress achieved in this respect, and in particular of the action taken by the Government of Madhya Pradesh and Maharastra.

27. Environmental questions. The Government has stated that minimising the adverse effect on the ecosystem due to the implementation of the Project has been one of the main objectives of the planning process; and that, among other things, afforestation projects have been planned. Please provide copies of any environmental arrangement studies which may have been carried out in this respect.

28. The Committee recalls that it had also raised a number of questions on the application of the Convention generally, in a request addressed directly to the Government in 1988. As the Government has communicated information only on the effects of the Sardar Sarovar Project in its most recent report, the Committee is repeating its previous direct request, and hopes that the Government will provide detailed information in this respect for its next session.

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In addition, requests regarding certain points are being addressed directly to the following States: Brazil, India, Iraq.